Volume 4

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1990

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, June 5, 1990
and General Election, November 6, 1990

General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature

1989–90 Regular Session
1989–90 First Extraordinary Session

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CHAPTER 1329

An act to amend Sections 1250, 1599.60 and 1599.64 of, and to add Sections 1418.1 and 1599.652 to, the Health and Safety Code, and to amend Sections 11006.9, 14002, 14005.16, 14006.2, 14006.3, 14006.4, 14015, 14019.4, 14022.1, 14022.4, 14052, 14087.61, 14107.2, 14108, 14110.4, 14110.6, 14110.9, 14115.2, 14124.7, 14132, 14132c, 14132f, 14132h, 14132s, 14132y, 14133.4, 14136.3, 14170, and 14195.6 of, and to add Section 14005.19 to, the Welfare and Institutions Code, relating to health services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Pilot projects have been conducted over the last several years which have successfully demonstrated the need for, and effectiveness of, respite care services to alleviate the stress experienced by caregivers providing 24-hour care in the home to a frail older adult or functionally impaired adult.

(b) Statutory and regulatory barriers against the admission of persons to nursing facilities for a short stay for the provision of out-of-home respite care services in long-term health care facilities continue to exist.

SEC. 2. (a) It is the intent of the Legislature to modify the admission, transfer, and discharge requirements of licensed skilled nursing and intermediate care facilities in order to allow families and other responsible parties easier access to nursing homes for purposes of seeking respite from their caregiving obligations without jeopardizing the health and safety of persons receiving the respite care services.

(b) It is not the intent of the Legislature to permit the provision of respite care services in licensed skilled nursing and intermediate care facilities to be an allowable cost under the Medi-Cal program, unless it is already being provided through a Medicaid waiver program pursuant to Section 1396n of Title 42 of the United States Code, or is already allowed as a covered service by the Medi-Cal program.

(c) It is not the intent of the Legislature to relieve licensed skilled nursing and intermediate care facilities who provide respite care services under Chapter 2.4 (commencing with Section 1417) of Division 2 of the Health and Safety Code of their responsibilities for meeting all other requirements under state and federal law unless so specified.

SEC. 3. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services. medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) "Congregate living health facility" means a residential home with a capacity, except as provided in paragraph (4), of no more than six beds, which provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, physically disabled persons, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A catastrophically and severely disabled person means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a catastrophically disabled person shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4) (A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, which is located in a county with a population of 500,000 or more persons may have not more than 25 beds for the purpose of serving terminally ill persons.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) which is located in a county of 500,000 or more persons may have not more than 12 beds for the purpose of serving catastrophically and severely disabled persons.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a

correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

(k) "Nursing facility" means a facility that is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

SEC. 3.5. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and

professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly

constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) "Congregate living health facility" means a residential home with a capacity, except as provided in paragraph (4), of no more than six beds, which provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social recreational, and at least one type of service specified in paragraph (2) The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, physically disabled persons, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A "life-threatening illness" means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A catastrophically and severely disabled person means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a catastrophically disabled person

shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4) (A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, persons who have been diagnosed with a life-threatening illness, or both, which is located in a county with a population of 500,000 or more persons may have not more than 25 beds for the purpose of serving terminally ill persons.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) which is located in a county of 500,000 or more persons may have not more than 12 beds for the purpose of serving catastrophically and severely disabled persons.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

(k) "Nursing facility" means a facility that is licensed as either of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

SEC. 4. Section 1418.1 is added to the Health and Safety Code, to read:

1418.1. (a) Any person receiving respite care services shall be permitted to bring medications to the skilled nursing facility or intermediate care facility if the contents have been examined and positively identified upon the patient's admission to the facility by the patient's personal physician and surgeon or a pharmacist retained by the facility.

(b) A skilled nursing facility or intermediate care facility providing respite care services shall not be required to afford a person receiving respite care services a bedhold when the person is transferred to a general acute care hospital, as defined in Section 1250.

(c) A skilled nursing facility or intermediate care facility providing respite care services shall permit the personal physician and surgeon of a person receiving respite care services to issue advance orders for care and treatment for a period not to exceed 90 days from the date of admission of the person, based on the person's medical history, diagnosis, and physical assessment conducted upon admission. The skilled nursing facility or intermediate care facility may readmit the person for respite care services on the basis of the advance orders for care and treatment, unless the personal physician and surgeon of the person indicates that there has been a significant change in the person's medical condition. These advance orders shall only be used by the skilled nursing or intermediate care facility during periods in which the person is receiving respite care services.

(d) A skilled nursing facility or intermediate care facility providing respite care services may implement an abbreviated resident assessment and care planning procedure for persons admitted for respite care services consistent with the facility's obligation to protect the health and safety of residents and the general public. The abbreviated resident assessment and care planning procedure shall address the necessary care services required by the person admitted for respite care during the length of the respite care stay. The abbreviated resident assessment and care planning procedure documents do not have to be updated with every readmission of the same person to the facility for respite care services, unless the personal physician and surgeon of the person indicates that there has been a significant change in the person's

medical condition.

(e) As used in this section, "respite care services" means service provided to frail elderly or functionally impaired persons in a licensed skilled nursing facility or intermediate care facility, as defined in Section 1250, on a temporary or periodic basis to relieve persons who are providing their care at home.

(f) As used in this section, "temporary or periodic" means a period of time not to exceed 15 consecutive days or a total of 45 days in any one year.

(g) No more than 10 percent of a skilled nursing or intermediate care facility's total licensed bed capacity may be used during any one calendar year for the provision of respite care services as defined in this section. A facility may exceed this limit with the prior written approval of the State Department of Health Services.

SEC. 4.5. Section 1599.60 of the Health and Safety Code is amended to read:

1599.60. As used in this chapter:

(a) "Abbreviated contract of admission" means a contract which meets the provisions of this chapter, except as otherwise provided, for a resident who is receiving respite care services, as defined in Section 1418.1. The following provisions of this chapter shall not apply to an abbreviated contract of admission: subdivision (b) of Section 1599.65, subdivision (b) of Section 1599.67, Section 1599.69, subdivision (b) of Section 1599.76, and Section 1599.79.

(b) "Contract of admission" includes all documents which a resident or his or her representative must sign at the time of, or as a condition of, admission to a long-term health care facility, as defined in Section 1326.

(c) "Department" means the State Department of Health Services or its designee.

SEC. 5. Section 1599.64 of the Health and Safety Code is amended to read:

1599.64. (a) All abbreviated contracts of admission and contracts of admission shall be printed in black type of not less than 10-point type size, on plain white paper. The print shall appear on one side of the paper only.

(b) The contract shall be written in clear, coherent, and unambiguous language, using words with common and everyday meanings. It shall be appropriately divided, and each section captioned.

(c) An abbreviated contract of admission shall include a statement indicating that respite care services, as defined in Section 1418.1, provided by the skilled nursing facility or intermediate care facility is not a Medi-Cal covered service and can only be provided by the facility on a private-pay or third-party payor basis, unless the person is participating in a Medicaid waiver program pursuant to Section 1396n of Title 42 of the United States Code, or other respite care service already covered by the Medi-Cal program.

(d) An abbreviated contract of admission shall specify the

discharge date agreed to upon admission by the skilled nursing facility or intermediate care facility and the person being admitted or his or her representative. This discharge date shall be binding as a ground for discharge in addition to any other ground for discharge pursuant to federal or state law and regulations.

(e) An abbreviated contract of admission shall include a statement informing the person being admitted for respite care services that the contract is designed specifically for the provision of respite care services and cannot be used for any other type of admission to the facility.

SEC. 6. Section 1599.652 is added to the Health and Safety Code, to read:

1599.652. A person who seeks to be admitted to the same skilled nursing facility or intermediate care facility to receive respite care services for which there already exists a prior executed abbreviated contract of admission which was signed by that person, or his or her legal representative or responsible party, in accordance with this chapter shall not be required to execute a new abbreviated contract of admission if the person, or his or her legal representative or responsible party, either prior to or upon admission, signs a written statement prepared by the facility which lists the modifications to the abbreviated contract of admission.

The written statement shall indicate the date upon which the person's signature was obtained. The written statement shall be kept on file by the facility with the person's previously signed abbreviated contract of admission.

This section shall not apply to any person who has been declared legally incompetent subsequent to the time he or she signed the abbreviated contract of admission. This section shall not apply to any person when the physician and surgeon of that person has determined that the person is unable to understand and sign the written statement because of his or her medical condition.

SEC. 7. Section 11006.9 of the Welfare and Institutions Code is amended to read:

11006.9. It is a cause for revocation of a permit or license by the department or the State Department of Health Services for any person, association, or corporation that maintains, conducts, or, as manager or officer or in any other administrative capacity, assists in maintaining or conducting any nursing facility, any category of intermediate care facility for the developmentally disabled, or nonmedical board and care facility to obtain, as an additional cost of care, aid allocated to a recipient for his or her personal or incidental needs or to obtain and fail to deliver such aid allocation to the recipient. The department or the State Department of Health Services shall initiate license or permit revocation proceedings.

SEC. 7.3. Section 14002 of the Welfare and Institutions Code is amended to read:

14002. For the purposes of this article, the following definitions shall apply, commencing January 1, 1990:

(a) "Community spouse" means the spouse of an institutionalized spouse.

(b) "Institutionalized spouse" means any individual to whom all of the following apply:

(1) The individual is in a medical institution or nursing facility and is likely to meet that requirement for at least 30 consecutive days.

(2) The individual is married to a spouse who is not in a medical institution or nursing facility.

(3) Except for purposes of Sections 14005.7, 14005.12, 14005.16, and 14005.17, an individual who is admitted to a medical institution or nursing facility on or after September 30, 1989, and who applies for Medi-Cal benefits on or after January 1, 1990, or a Medi-Cal recipient who is admitted to a medical institution or nursing facility on or after January 1, 1990.

(c) "Medical institution" means the same as defined in Section 435.1009 of Title 42 of the Code of Federal Regulations.

(d) "Nursing facility" has the same meaning as contained in Section 1250 of the Health and Safety Code.

SEC. 7.5. Section 14005.16 of the Welfare and Institutions Code, as amended by Chapter 1430 of the Statutes of 1989, is amended to read:

14005.16. (a) In determining the eligibility of a married individual pursuant to Section 14005.4 or 14005.7, who resides in a nursing facility, and who is in a Medi-Cal family budget unit separate from that of his or her spouse, the community property interest of the noninstitutionalized spouse in the income of the married individual shall not be considered income available to that individual.

(b) For purposes of this section, there shall be a presumption, rebuttable by either spouse, that each spouse has a community property interest in one-half of the total monthly income of both spouses.

(c) (1) This section shall not become operative unless Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) is amended to authorize the consideration of state community property laws in determining eligibility or the federal government authorizes the state to apply community property laws in that determination.

(2) The department shall report to the appropriate committees of the Legislature upon the occurrence of the amendment of federal law or the receipt of federal approval, as specified in paragraph (1).

SEC. 7.7. Section 14005.19 is added to the Welfare and Institutions Code, to read:

14005.19. The receipt of respite care, as defined in Section 1418.1 of the Health and Safety Code, shall not affect the eligibility of any individual with respect to benefits under this chapter, except as subject to the limitations of subdivision (b) of Section 14124.7.

SEC. 8. Section 14006.2 of the Welfare and Institutions Code is amended to read:

14006.2. (a) In determining the eligibility of a married individual, pursuant to Section 14005.4 or 14005.7, who, in accordance with Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and regulations adopted pursuant thereto, is considered to be living separately from his or her spouse, the individual shall be considered to have made a transfer of resources for full and adequate consideration under Section 14006 or 14015 by reason of either of the following:

(1) Having entered into a written agreement with his or her spouse dividing their nonexempt community property into equal shares of separate property. Property so agreed to be separate property shall be considered by the department to be the separate property of the spouse who, pursuant to the agreement, is the owner of the property. Only in cases in which separate property owned by one spouse is actually made available to the other spouse, may the department count the separate property in the eligibility determination of the nonowner spouse.

(2) Having transferred to his or her spouse all of his or her interest in a home, whether the transfer was made before or after the individual became a resident in a nursing facility in accordance with and to the extent permitted by Title XIX of the federal Social Security Act and regulations promulgated pursuant thereto.

(b) The department shall furnish to all Medi-Cal applicants a clear and simple statement in writing advising them that (1) in the case of an individual who is an inpatient in a nursing facility, if the individual or the individual's conservator transferred to the individual's spouse all of the interest in a home, the individual shall not be considered ineligible for Medi-Cal by reason of the transfer: and that (2) if the individual and the individual's spouse execute a written interspousal agreement which divides and transmutes nonexempt community property into equal shares of separate property, the separate property of the individual's spouse shall not be considered available to the individual and need not be spent by the spouse for the individual's care in a nursing facility or other medical institution. The statement provided for in this subdivision shall also be furnished to each individual admitted to a nursing facility, along with, but separately from, the statement required under Section 72527 of Title 22 of the California Code of Regulations.

(c) In order to qualify for Medi-Cal benefits pursuant to Section 14005.4 or 14005.7, a married individual who resides in a nursing facility, and who is in a Medi-Cal budget unit separate from that of his or her spouse, shall be required to expend his or her other resources for his or her own benefit, so that the amount which remains does not exceed the limit established pursuant to subdivision (c) of Section 14006. In the event that the married individual expends his or her resources for expenses associated with or for improvements to property, those expenditures shall be considered to be for his or her own benefit only to the extent that the expenditures are proportionate to the ownership interest the individual has in the

property. For purposes of this section, the term "his or her other resources" shall be limited to the following:

(1) All of his or her separate property that would not have been exempt under applicable Medi-Cal laws and regulations at the time when he or she entered a nursing facility, or at the date of execution of the agreement referred to in this section, whichever is earlier. For purposes of this paragraph, the mere change of residence from one facility to another shall not be deemed to be a new entry.

(2) One-half of all the community property, or the proceeds from the sale or exchange of that property, that would not have been exempt at the time described in paragraph (1).

(d) For purposes of subdivision (c), in the absence of an agreement such as that referred to in subdivision (a), there shall be a presumption, rebuttable by either spouse, that all property owned by either spouse was community property.

(e) The statement furnished pursuant to subdivision (b) shall advise all persons entering a long-term care facility, and all Medi-Cal applicants that only their half of the community property shall be taken into account in determining their eligibility for Medi-Cal, whether or not they execute the written interspousal agreement referred to in the statement.

(f) This section shall not apply to an institutionalized spouse.

(g) This section shall apply to the full extent to an institutionalized spouse if Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) is amended to authorize the consideration of state community property law in determining eligibility under this chapter, or the federal government authorizes the state to apply community property laws in making that determination.

(h) (1) Subdivision (f) shall become inoperative if the federal government amends Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) to allow state community property laws to be considered for Medi-Cal eligibility purposes, or the federal government authorizes the state to apply community property laws in making that determination.

(2) The department shall report to the appropriate committees of the Legislature upon the occurrence of the amendment of federal law or receipt of federal authorization as specified in paragraph (1).

SEC. 9. Section 14006.3 of the Welfare and Institutions Code is amended to read:

14006.3. The department, at the time of application or the assessment pursuant to Section 14006.6, and any nursing facility shall, prior to admitting any person, provide a clear and simple statement, in writing, in a form and language specified by the department, to that person and that person's spouse and responsible relative which explains how Medi-Cal eligibility requirements affect their separate and community property.

SEC. 10. Section 14006.4 of the Welfare and Institutions Code is amended to read:

14006.4. (a) The statement required by Sections 14006.2 and

14006.3 shall be in the following form:

"NOTICE REGARDING SEPARATE AND COMMUNITY PROPERTY AND ELIGIBILITY FOR MEDI-CAL

If you or your spouse is in or is entering Long-Term Care, read this important message!

You both do not have to use all your resources, such as savings, before Medi-Cal might help pay for all or some of the long-term care costs.

You should be aware of the following to take advantage of this provision of the law:

If you and your spouse have a written property agreement (Interspousal Agreement) dividing your community property into equal shares, only the spouse in long-term care has to spend his or her resources down to the Medi-Cal property limit before Medi-Cal might help pay for nursing home costs. The at-home spouse's share of the resources does not have to be used.

Even if you do not have a written agreement, the county welfare department will automatically divide your community property for Medi-Cal purposes at the time the long-term care spouse applies for Medi-Cal. This automatic division is computed as of the date the spouse entered long-term care

A spouse in long-term care may transfer all his or her interest in the home to the at-home spouse without affecting Medi-Cal eligibility

The Medi-Cal program assumes that all of a married couple's income is community income, so it can be divided into equal shares when one spouse is in long-term care. However, if the spouse at home receives more than half of the couple's community property income in his or her own name, the spouse at home may keep the larger share.

This is only a brief description of the Medi-Cal eligibility rules, for more detailed information, you should call your county welfare department. You will probably want to consult with the local branch of the state long-term care ombudsman, an attorney, or a legal services program for seniors in your area.

I have read the above notice and have received a copy.

Dated: _____ Signature: _____ "

(b) The statement required by subdivision (a) shall be printed in at least 10-point type, shall be clearly separate from any other document or writing, and shall be signed by the person to be admitted and that person's spouse, and any responsible relative.

(c) Any nursing facility that willfully fails to comply with this section shall be subject to a class "B" citation, as defined by Section 1424 of the Health and Safety Code.

(d) The department may revise this statement as necessary to maintain its consistency with state and federal law.

(e) (1) This section shall apply to institutionalized spouses only if Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) is amended to authorize the consideration of state community property law in determining eligibility under this chapter, or the federal government authorizes the state to apply community property laws in making that determination.

(2) The department shall report to the appropriate committees of the Legislature upon the occurrence of the amendment of federal law or the receipt of federal authorization to apply community property law as specified in paragraph (1).

SEC. 11. Section 14015 of the Welfare and Institutions Code is amended to read:

14015. (a) The providing of health care under this chapter shall not impose any limitation or restriction upon the person's right to sell, exchange or change the form of property holdings nor shall the care provided constitute any encumbrance on the holdings. However, the disposal of resources for less than fair market value shall, to the extent and under the circumstances set forth in Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) result in a period of ineligibility for aid.

(b) Any item of durable medical equipment which is purchased for a recipient pursuant to this chapter exclusively with Medi-Cal program funds shall be returned to the department when the department determines that the item is no longer medically necessary for the recipient. Items of durable medical equipment shall include, but are not limited to, wheelchairs and special hospital beds.

SEC. 12. Section 14019.4 of the Welfare and Institutions Code is amended to read:

14019.4. (a) Any provider of health care services who obtains a label or copy from the Medi-Cal card or other proof of eligibility pursuant to this chapter shall not seek reimbursement nor attempt to obtain payment for the cost of those covered health care services from the eligible applicant or recipient, or any person other than the department, a third-party payor who provides a contractual or legal entitlement to health care services.

(b) Whenever a service or set of services rendered to a Medi-Cal beneficiary results in the submission of a claim in excess of five hundred dollars ($500), and the beneficiary has given the provider proof of eligibility to receive the service or services, the provider shall issue the beneficiary a receipt to document that appropriate proof of eligibility has been provided. The form and content of those receipts shall be determined by the provider but shall be sufficient to comply with the intent of this subdivision. Nursing facilities and all categories of intermediate care facilities for the developmentally disabled are exempt from the requirements of this subdivision.

SEC. 13. Section 14022.1 of the Welfare and Institutions Code is amended to read:

14022.1 Any nursing facility or any category of intermediate care

facility for the developmentally disabled participating in the Medi-Cal program shall supply to the department full and complete information as to the identity (a) of each person having, directly or indirectly, an ownership interest of 10 percent or more in the facility, or, who is owner, in whole or part, of any mortgage, deed of trust, note, or other obligation secured, in whole or part, by the facility, or any of the property or assets of the facility, (b) in case a facility is organized as a corporation, of each officer and director of the corporation, and (c) in case a facility is organized as a partnership, of each partner; and shall promptly report any changes which would affect the current accuracy of the information so required to be supplied.

SEC. 14. Section 14022.4 of the Welfare and Institutions Code is amended to read:

14022.4. (a) Any nursing facility or any category of intermediate care facility for the developmentally disabled currently certified to participate in the Medi-Cal program may not voluntarily withdraw from the program unless all of the following conditions are met:

(1) The facility shall file with the department a notice of intent to withdraw from the Medi-Cal program.

(2) Except for patients to be transferred or discharged only for medical reasons, or for patients' welfare or that of other patients, or for nonpayment for his or her stay, the facility shall not subsequently evict any Medi-Cal recipient or private pay patient residing in the facility at the time the notice of intent to withdraw from the Medi-Cal program is filed.

(3) Patients admitted to the facility on or after the date of the notice of intent to withdraw from the Medi-Cal program shall be advised orally and in writing of both the following:

(A) That the facility intends to withdraw from the Medi-Cal program.

(B) That notwithstanding Section 14124.7, the facility is not required to keep a new resident who converts from private pay to Medi-Cal.

(b) Subdivision (a) shall not apply to facilities that have filed, prior to May 1, 1987, a notice of intent to withdraw from the Medi-Cal program.

(c) The department shall notify the appropriate substate ombudsmen monthly as to which facilities have filed a notice of intent to withdraw from the Medi-Cal program. This information shall also be made available to the public and noted in facility files available in each district office.

(d) The facility may formally withdraw from the Medi-Cal program when all patients residing in the facility at the time the facility filed the notice of intent to withdraw from the Medi-Cal program no longer reside in the facility.

(e) If a facility that has withdrawn as a Medi-Cal provider pursuant to this section subsequently reapplies to the department to become a Medi-Cal provider, the department shall require as a

condition of becoming a Medi-Cal provider that the facility enter into a five-year Medi-Cal provider contract with the department.

(f) (1) This section shall be inoperative in the event federal law or federal or state appellate judicial decisions prohibit implementation or invalidate any part of this section.

(2) In the event of any occurrence which renders this section inoperative pursuant to paragraph (1), the department shall within 30 days, report that information to the Legislature.

(g) (1) This section does not apply to any facility which ceases operations entirely.

(2) For purposes of this subdivision, "ceases operations entirely" means not being in operation for a period of not less than 12 months.

SEC. 15. Section 14052 of the Welfare and Institutions Code is amended to read:

14052. "State-only Medi-Cal person" means a person who resides in a nursing facility or any category of intermediate care facility for the developmentally disabled, and who meets all of the following requirements:

(a) Could not meet the definition of a categorically needy person under Section 14050.1, a medically needy person under subdivision (a) of Section 14051 or a medically needy family person under subdivision (b) of Section 14051.

(b) Is over 21 years of age.

(c) Meets the eligibility requirements of Section 14005.4.

SEC. 16. Section 14087.61 of the Welfare and Institutions Code is amended to read:

14087.61. (a) The counties contracting pursuant to subdivision (a) of Section 14087.5 may arrange for the delivery of Medi-Cal services to Medi-Cal beneficiaries, except that the counties may exclude all of the following:

(1) Long-term care services rendered by nursing facilities or all categories of intermediate care facilities for the developmentally disabled.

(2) Dental services.

(3) Services in any federal or state hospital.

(4) Home- or community-based care waivered services.

(b) Exclusion of these services shall be subject to the approval of the department and the California Medical Assistance Commission.

SEC. 17. Section 14107.2 of the Welfare and Institutions Code is amended to read:

14107.2. (a) Any person who solicits or receives any remuneration, including, but not restricted to, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in valuable consideration of any kind either:

(1) In return for the referral, or promised referral, of any individual to a person for the furnishing or arranging for the furnishing of any service or merchandise for which payment may be made in whole or in part under this chapter or Chapter 8 (commencing with Section 14200); or

(2) In return for the purchasing, leasing, ordering, or arranging for or recommending the purchasing, leasing, or ordering of any goods, facility, service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200) of this part,

is punishable upon a first conviction by imprisonment in the county jail for not longer than one year or state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both the imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment in the state prison.

(b) Any person who offers or pays any remuneration, including, but not restricted to, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in valuable consideration of any kind either:

(1) To refer any individual to a person for the furnishing or arranging for furnishing of any service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200); or

(2) To purchase, lease, order, or arrange for or recommend the purchasing, leasing or ordering of any goods, facility, service or merchandise for which payment may be made in whole or in part under this chapter or Chapter 8 (commencing with Section 14200),

is punishable upon a first conviction by imprisonment in the county jail for not longer than one year or state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both the imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment in the state prison.

(c) Subdivisions (a) and (b) shall not apply to either of the following:

(1) Any amount paid by an employer to an employee, who has a bona fide employment relationship with that employer, for employment with provision of covered items or services.

(2) A discount or other reduction in price obtained by a provider of services or other entity under this chapter or Chapter 8 (commencing with Section 14200), if the reduction in price is properly disclosed and reflected in the costs claimed or charges made by the provider or entity under this chapter or Chapter 8 (commencing with Section 14200). This paragraph shall not apply to consultant pharmaceutical services rendered to nursing facilities nor to all categories of intermediate care facilities for the developmentally disabled.

(d) For purposes of this section "kickback" means a rebate or anything of value or advantage, present or prospective, or any promise or undertaking to give any such rebate or thing of value or advantage, with a corrupt intent to unlawfully influence the person to whom it is given in actions undertaken by that person in his or her public, professional, or official capacity.

(e) The enforcement remedies provided under this section are

not exclusive and shall not preclude the use of any other criminal or civil remedy.

SEC. 18. Section 14108 of the Welfare and Institutions Code is amended to read:

14108. Any developmentally disabled recipient under this chapter receiving care in a nursing facility or any category of intermediate care facility for the developmentally disabled is entitled as a part of the therapeutic and rehabilitative program, to be temporarily absent from the facilities. The State Department of Health Services shall, with consultation from the State Department of Developmental Services, adopt regulations establishing the periods of time and conditions under which temporary absences shall be permitted. The regulations shall require that absences be in accordance with an individual program plan and provide for absences due to hospitalization for an acute condition. The limits on temporary leaves of absence established by the Department of Health Services by regulation shall not be less than 30 days per year.

During these temporary absences the State Department of Health Services shall reimburse the facility for the cost of maintaining the vacant accommodations at a rate determined by the department which shall be less than the regular rate.

SEC. 19. Section 14110.4 of the Welfare and Institutions Code is amended to read:

14110.4. (a) All laundry services for all apparel, linen, garments, towels, and hospital gowns shall be provided by a nursing facility or any category of intermediate care facility for the developmentally disabled at no cost to a recipient under this chapter. These laundry services shall be considered as part of the basic care provided by the facility under the daily rate provided for pursuant to this chapter. The director shall, if necessary, adjust the daily rate to provide for the costs of these services. A facility may, however, charge the patient a fee to provide special drycleaning or treatment for a garment needing this care, when the garment is owned by the patient and when the regular laundry service is not appropriate.

(b) A facility shall provide a periodic hair trim as part of its care for all patients who are recipients under this chapter. This service shall be included as part of the daily rate provided for pursuant to this chapter. The director shall, if necessary, adjust the daily rate to provide for the costs of these services. A facility may, however, charge a fee for beauty shop services for patients who request special treatments or styling of their hair.

(c) The director shall seek all federal funds available for implementation of this section.

SEC. 20. Section 14110.6 of the Welfare and Institutions Code is amended to read:

14110.6. (a) The director shall adopt regulations, establishing payment rates for nursing facilities, intermediate care facilities/developmentally disabled, and intermediate care facilities/developmentally disabled-habilitative as defined in Section

1250 of the Health and Safety Code, which are sufficient to provide an increase of one dollar and ninety-six cents ($1.96) per patient day for patients receiving skilled nursing services, one dollar and fifty-eight cents ($1.58) per patient day, for patients receiving intermediate care services, two dollars and twenty-nine cents ($2.29) per patient day for intermediate care facilities/developmentally disabled patients, to be used for wage increases and benefits to all employees, except a licensed nursing home administrator or an administrator-in-training and two dollars and thirty-five cents ($2.35) per patient day for intermediate care facilities/developmentally disabled-habilitative patients in facilities with 4 to 6 beds, and one dollar and ninety-eight cents ($1.98) per patient day for intermediate care facilities/developmentally disabled-habilitative patients in facilities with 7 to 15 beds, to be used for wage increases and benefits to all direct care staff. However, if either (1) the entry level wages of the lowest paid nonadministrative employee of a nursing facility, intermediate care facility/developmentally disabled, or intermediate care facility/developmentally disabled-habilitative, exceeds six dollars ($6) per hour as of August 1, 1984; or (2) upon the election of a county board of supervisors, for any nursing facility, intermediate care facility/developmentally disabled, or intermediate care facility/developmentally disabled-habilitative, which is operated by a county, the funds received pursuant to regulations adopted pursuant to this section shall be used solely for labor costs directly related to providing patient care services in order to meet patients' needs including the uses of funds provided for under subdivision (d) of Section 14110.7. Any increase in wages and benefits required by this section shall be in addition to any future mandatory increases required by federal or state law. The rate shall provide funding for the portion of additional costs necessary to implement the wage and benefit increase required by this section attributable to Medi-Cal patients. The portion of those additional costs shall be the same as the ratio of Medi-Cal patients to the total number of patients in the facility. These regulations shall be adopted, effective March 15, 1985, for skilled nursing facilities, intermediate care facilities, and intermediate care facilities/developmentally disabled, and by October 1, 1985, for intermediate care facilities/developmentally disabled-habilitative. Commencing October 1, 1990, these requirements shall become operative for nursing facilities.

(b) Each nursing facility or intermediate care facility/developmentally disabled, or, for the period prior to October 1, 1990, each skilled nursing facility or intermediate care facility, shall certify all of the following:

(1) All employees, except a licensed nursing home administrator or an administrator-in-training of a licensed nursing home, shall receive at least the prevailing federal or state minimum wage rate plus the average hourly wage increase established pursuant to Chapter 19 of the Statutes of 1978, and this section.

(2) All employees of the facility, except a licensed administrator or administrator-in-training, shall be paid not less than the sum of the employee's actual rate of pay as of the effective date of the Medi-Cal rate increase provided for under Section 14110.7 plus the amount of the adjustment specified pursuant to this section, or not less than the applicable agreed to rate plus the amount of the adjustment, whichever is greater.

(3) Any wage increase required pursuant to Section 1268.5 of the Health and Safety Code, is in addition to any minimum wages provided in this section.

(4) For purposes of determining the amount of Medi-Cal funds to be distributed for employee wages and benefits, the total Medi-Cal patient days recorded by the facility in the month of December 1983 shall be multiplied by the amount per patient day specified in subdivision (a) plus the amount provided by Chapter 19 of the Statutes of 1978. The new wage levels shall be determined by dividing the Medi-Cal funds received by the nonovertime hours worked by covered employees in December 1983, plus any adjustments due to additional employees as specified in Section 14110.7 and adjustments to reflect employee benefit allowances

(c) Each intermediate care facility/developmentally disabled-habilitative shall certify all of the following:

(1) All direct care staff, as defined in the department's regulations developed pursuant to Section 1267 7 of the Health and Safety Code, shall receive at least the prevailing federal or state minimum wage plus the average hourly wage increase pursuant to this section.

(2) For purposes of determining the amount of Medi-Cal funds to be distributed for intermediate care facilities/developmentally disabled-habilitative for employee wages and benefits, the total Medi-Cal patient days in the month of December 1984, shall be multiplied by the amount per patient day specified in subdivision (a). The new wage level shall be determined by dividing the Medi-Cal funds received by the nonovertime hours by covered direct care employees in December 1984, and adjustments to reflect employee benefit allowances

(d) The director shall order the inspection of relevant payroll and personnel records of facilities which are reimbursed for Medi-Cal patients under the rate of reimbursement established pursuant to subdivision (a) to ensure that the wage and benefit increases provided for have been implemented.

(e) Any facility which is paid under the rate provided for in subdivision (a) which the director finds has not made the wage and benefit increases provided for shall be liable for the amount of funds paid to the facility based upon the wage and benefit requirements provided for by this section but not distributed to employees for wages and benefits, plus a penalty equal to 10 percent of the funds not so distributed.

SEC. 21. Section 14110.9 of the Welfare and Institutions Code is amended to read:

14110.9. No nursing facility or any category of intermediate care facility for the developmentally disabled may require a security deposit from a Medi-Cal beneficiary who applies for admission to the facility.

SEC. 22. Section 14115.2 of the Welfare and Institutions Code is amended to read:

14115.2. (a) The department shall not require nursing facilities or any category of intermediate care facility for the developmentally disabled, as defined in Section 1250 of the Health and Safety Code to originate monthly bills for beneficiaries if the following conditions are met.

(1) A claim on which inpatient per diem days have been billed by the provider is received by the fiscal intermediary by the fifth working day of the month following the month being billed; and

(2) The claim received by the fiscal intermediary does not show a patient status code that indicates discharge or death on the last day billed for the recipient for that month.

(b) When the conditions listed above are met, the fiscal intermediary shall, by the 20th of the month, mail to the provider a preimprinted claim to cover the current month's services to those beneficiaries.

(c) The provider shall be required to check the preimprinted claim for accuracy, to make corrections, and to certify that the beneficiaries who are listed on the claim received the services listed

(d) The preimprinted claim shall be returned in the manner required by Section 14115, provided, the preimprinted claim shall be deemed a late submission no earlier than six months following the end of the month of service being billed.

(e) Except as otherwise provided in this section, the rights and duties of providers and the department with respect to the billing procedures hereby established shall be governed by the provisions of this chapter.

SEC. 23 Section 14124.7 of the Welfare and Institutions Code is amended to read:

14124.7. (a) No long-term health care facility participating as a provider under the Medi-Cal program shall transfer, or seek to evict, out of the facility any resident as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal.

(b) This section does not apply to any resident of a skilled nursing facility or intermediate care facility, receiving respite care services, as defined in Section 1418.1 of the Health and Safety Code, unless it is already being provided through a Medicaid waiver program pursuant to Section 1396n of Title 42 of the United States Code, or is already allowed as a covered service by the Medi-Cal program.

SEC. 24. Section 14132 of the Welfare and Institutions Code is amended to read:

14132. The following is the schedule of benefits under this chapter.

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, respiratory care, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture, and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to, physician and podiatric services, physical therapy and occupational therapy, are covered subject to utilization controls.

(c) Nursing facility services, subacute care services, and services provided by any category of intermediate care facility for the developmentally disabled, including podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy, and audiology services for patients in nursing facilities and any category of intermediate care facility for the developmentally disabled are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal List of Contract Drugs and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetists services when rendered in an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered, subject to utilization controls. Nothing in this subdivision shall be construed to require prior authorization for anesthesiologist services provided as part of an outpatient medical procedure or for portable X-ray services in a nursing facility or any category of intermediate care facility for the developmentally disabled.

(g) Blood and blood derivatives are covered.

(h) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. The department's utilization controls shall not require X-rays as a condition of reimbursement for fillings for children under 18 years of age. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial

dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's California Children Services Program.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control

(n) Family planning services are covered, subject to utilization controls.

(o) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitation services, in a general acute care hospital are covered, subject to utilization controls, when either of the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery.

(2) A patient with a chronic or progressive disease requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible.

(p) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520).

(q) Application of fluoride, or other appropriate fluoride treatment as defined by the department, other prophylaxis treatment for children 17 years of age and under, are covered.

(r) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

This subdivision shall be in effect only to the extent federal financial participation is available as set forth in Section 14106.6.

(s) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to those persons. These services may be provided to patients placed in shared or congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary. As used in this section, "in-home medical care service" includes utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical equipment, to the extent that federal financial participation is available.

As used in this subdivision, in-home medical care services, include, but are not limited to:

(1) Level of care and cost of care evaluations.

(2) Expenses, directly attributable to home care activities, for materials.

(3) Physician fees for home visits.

(4) Expenses directly attributable to home care activities for shelter and modification to shelter.

(5) Expenses directly attributable to additional costs of special diets, including tube feeding.

(6) Medically related personal services

(7) Home nursing education.

(8) Emergency maintenance repair.

(9) Home health agency personnel benefits which permit coverage of care during periods when regular personnel are on vacation or using sick leave.

(10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the body.

(11) Emergency and nonemergency medical transportation.

(12) Medical supplies.

(13) Medical equipment, including, but not limited to, scales, gurneys, and equipment racks suitable for paralyzed patients.

(14) Utility use directly attributable to the requirements of home care activities which are in addition to normal utility use

(15) Special drugs and medications.

(16) Home health agency supervision of visiting staff which is medically necessary, but not included in the home health agency rate.

(17) Therapy services.

(18) Household appliances and household utensil costs directly attributable to home care activities.

(19) Modification of medical equipment for home use.

(20) Training and orientation for use of life support systems, including, but not limited to support of respiratory functions.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

Beneficiaries receiving in-home medical care services are entitled to the full range of services within the Medi-Cal scope of benefits as defined by this section, subject to medical necessity and applicable utilization control. Services provided pursuant to this subdivision, which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with a home- and community-based services waiver.

(t) Home- and community-based services approved by the United States Department of Health and Human Services may be covered to the extent that federal financial participation is available for those services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for any or all home- and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for those services shall be limited by the terms, conditions, and duration of the federal waivers.

The department shall submit a report, as provided in Section 28 of the 1982 Budget Act, 30 days prior to providing these services as Medi-Cal benefits. The report shall be submitted to the Joint Legislative Budget Committee and the fiscal committees and shall address the cost-effectiveness of services provided pursuant to this subdivision.

(u) Comprehensive perinatal services, as provided through an agreement with a health care provider designated in Section 14134.5 and meeting the standards developed by the department pursuant to Section 14134.5, subject to utilization controls.

The department shall seek any federal waivers necessary to implement the provisions of this subdivision. The provisions for which appropriate federal waivers cannot be obtained shall not be implemented. Provisions for which waivers are obtained or for which waivers are not required shall be implemented notwithstanding any inability to obtain federal waivers for the other provisions. No provision of this subdivision shall be implemented unless matching funds from Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(v) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(w) Hospice service which is Medicare-certified hospice service is covered, subject to utilization controls. Coverage shall be available only to the extent that no additional net program costs are incurred.

(x) When a claim for treatment provided to a beneficiary includes both services which are authorized and reimbursable under this chapter, and services which are not reimbursable under this chapter, that portion of the claim for the treatment and services authorized and reimbursable under this chapter shall be payable.

(y) Home- and community-based services approved by the United States Department of Health and Human Services for beneficiaries with a diagnosis of AIDS or ARC, who require intermediate care or a higher level of care.

Services provided pursuant to a waiver obtained from the Secretary of the United States Department of Health and Human Services pursuant to this subdivision, and which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with the waiver, and subject to the terms, conditions, and duration of the waiver. These services shall be provided to individual beneficiaries in accordance with the client's needs as identified in the plan of care, and subject to medical necessity and applicable utilization control.

The director may under this section contract with organizations qualified to provide, directly or by subcontract, services provided for in this subdivision to eligible beneficiaries. Contracts or agreements entered into pursuant to this division shall not be subject to the Public Contract Code.

(z) Respiratory care when provided in organized health care systems as defined in Section 3701 of the Business and Professions Code, and as an in-home medical service as outlined in subdivision (s)

SEC. 25. Section 14132c of the Welfare and Institutions Code, as added by Assembly Bill 4104 of the 1989–90 Regular Session, is amended to read:

14132c. Nursing facility services, subacute care services, services provided by any category of intermediate care facility for the developmentally disabled, including podiatry, physician, nurse practitioner services, and prescribed drugs, as described in Section 14132d, are covered under this chapter subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy, and audiology services for patients in nursing facilities and any category of intermediate care facility for the developmentally disabled are covered under this chapter, subject to utilization controls.

SEC 26. Section 14132f of the Welfare and Institutions Code, as

added by Assembly Bill 4104 of the 1989–90 Regular Session, is amended to read:

14132f. Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetists services when rendered in an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered under this chapter, subject to utilization controls. Nothing in this section shall be construed to require prior authorization for anesthesiologist services provided as part of an outpatient medical procedure or for portable X-ray services in a nursing facility or any category of intermediate care facility for the developmentally disabled.

SEC. 27. Section 14132h of the Welfare and Institutions Code, as added by Assembly Bill 4104 of the 1989–90 Regular Session, is amended to read:

14132h. Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered under this chapter, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. The department's utilization controls shall not require X-rays as a condition of reimbursement for fillings for children under 18 years of age. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's California Children Services Program.

SEC. 28. Section 14132s of the Welfare and Institutions Code, as added by Assembly Bill 4104 of the 1989–90 Regular Session, is amended to read:

14132s. (a) In-home medical care services are covered under this chapter when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to those persons. These services may be provided to patients placed in shared or congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary.

(b) As used in this section, "in-home medical care service" includes utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical equipment, to the extent that federal financial participation is available.

(c) As used in this section, in-home medical care services, include, but are not limited to, all of the following:

(1) Level of care and cost of care evaluations.

(2) Expenses, directly attributable to home care activities, for materials.

(3) Physician fees for home visits.

(4) Expenses directly attributable to home care activities for shelter and modification to shelter.

(5) Expenses directly attributable to additional costs of special diets, including tube feeding.

(6) Medically related personal services.

(7) Home nursing education

(8) Emergency maintenance repair.

(9) Home health agency personnel benefits which permit coverage of care during periods when regular personnel are on vacation or using sick leave.

(10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the body.

(11) Emergency and nonemergency medical transportation

(12) Medical supplies.

(13) Medical equipment, including, but not limited to, scales, gurneys, and equipment racks suitable for paralyzed patients.

(14) Utility use directly attributable to the requirements of home care activities which are in addition to normal utility use.

(15) Special drugs and medications

(16) Home health agency supervision of visiting staff which is medically necessary, but not included in the home health agency rate.

(17) Therapy services

(18) Household appliances and household utensil costs directly attributable to home care activities

(19) Modification of medical equipment for home use.

(20) Training and orientation for use of life support systems, including, but not limited, to support of respiratory functions.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

(d) Beneficiaries receiving in-home medical care services are entitled to the full range of services within the Medi-Cal scope of benefits as defined by this article, subject to medical necessity and applicable utilization control.

(e) Services provided pursuant to this section, which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with a home- and community-based services waiver

SEC. 29. Section 14132y of the Welfare and Institutions Code, as added by Assembly Bill 4104 of the 1989-90 Regular Session, is amended to read:

14132y. (a) Home- and community-based services approved by the United States Department of Health and Human Services for beneficiaries with a diagnosis of AIDS or ARC, who require intermediate care or a higher level of care are covered under this chapter.

(b) Services provided pursuant to a waiver obtained from the Secretary of the United States Department of Health and Human Services pursuant to this section, and which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with the waiver, and subject to the terms, conditions, and duration of the waiver. These services shall be provided to individual beneficiaries in accordance with the client's needs as identified in the plan of care, and subject to medical necessity and applicable utilization control.

(c) The director may, under this section, contract with organizations qualified to provide, directly or by subcontract, services provided for in this section to eligible beneficiaries. Contracts or agreements entered into pursuant to this division shall not be subject to the Public Contract Code.

SEC. 30. Section 14133.4 of the Welfare and Institutions Code is amended to read:

14133.4. Notwithstanding any other provision of law, utilization controls adopted by the State Department of Health Services shall not include prior authorization for portable X-ray services provided in nursing facilities and all categories of intermediate care facilities for the developmentally disabled, as defined in Section 1250 of the Health and Safety Code.

SEC. 31. Section 14136.3 of the Welfare and Institutions Code is amended to read

14136.3. No prior authorization shall be necessary for the provision of nonemergency medical transportation services to Medi-Cal beneficiaries when the beneficiary is being transported from an acute care hospital following a stay as an inpatient to a nursing facility or any category of intermediate care facility for the developmentally disabled licensed pursuant to Section 1250 of the Health and Safety Code.

SEC. 32. Section 14170 of the Welfare and Institutions Code is amended to read:

14170. Amounts paid for services provided to Medi-Cal beneficiaries shall be audited by the department in the manner and form prescribed by the department. The department shall maintain adequate controls to ensure responsibility and accountability for the expenditure of federal and state funds. Cost reports and other data submitted by providers to a state agency for the purpose of determining reasonable costs for services or establishing rates of payment shall be considered true and correct unless audited or reviewed by the department within 18 months after July 1, 1969, the close of the period covered by the report, or after the date of

submission of the original or amended report by the provider, whichever is later. Moreover the cost reports and other data for cost reporting periods beginning on January 1, 1972, and thereafter shall be considered true and correct unless audited or reviewed within three years after the close of the period covered by the report, or after the date of submission of the original or amended report by the provider, whichever is later.

Nothing in this section shall be construed to limit the correction of cost reports or rates of payment when inaccuracies are determined to be the result of intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the provider or inability to reach agreement on the terms of final settlement.

Notwithstanding any other provision of law, nursing facilities and all categories of intermediate care facilities for the developmentally disabled which have received and are receiving funds for salary increases pursuant to Sections 14110.6 and 14110.7 shall maintain payroll and personnel records for examination by auditors from the department and the Labor Commissioner beginning March 1985 until the records have been audited, or until December 31, 1992, whichever occurs first.

SEC. 33. Section 14195.6 of the Welfare and Institutions Code is amended to read:

14195.6. The department shall develop a request for a proposal, and may award a contract to an expert contractor to implement the standards and practices established by the Medi-Cal Therapeutic Drug Utilization Review System through use of a therapeutically oriented drug utilization review system by July 1, 1989. The contract shall include a requirement to analyze the therapeutic outcomes of the Medi-Cal Drug Program using the California MMIS for the period of July 1, 1987, through the date the standards established by this article are implemented. Thereafter, the contractor shall submit quarterly reports to the department and the Legislature analyzing therapeutic outcomes in a manner that will allow comparisons with the experience analyzed for the period of July 1, 1987, until implementation of the standards established by this article. The analysis shall include reports on at least the following items:

(a) Compatibility of medication to diagnosis.

(b) Overprescribing of drugs.

(c) Prescription of contraindicated or incompatible drugs.

(d) Number of days of drug-induced hospitalization and institutionalization in nursing facilities or all categories of intermediate care for the developmentally disabled occurring because of the factors specified in subdivisions (a) to (c), inclusive.

(e) Number of days of drug-induced hospitalization and institutionalization in nursing facilities or any category of intermediate care facility for the developmentally disabled avoided due to changes in drug regimes which result from compliance by prescribers and beneficiaries with the standards established pursuant to this article.

The department is authorized to require the contractor to phase in implementation of the prescriber notification, as established by protocols for informing prescribers of inappropriate prescribing.

SEC. 34. Sections 25 to 29, inclusive, of this act, shall become operative only if Assembly Bill 4104 of the 1989–90 Regular Session is enacted, in which case Section 24 of this act shall remain operative only until January 1, 1991, and as of that date is repealed, and Sections 25 to 29, inclusive, of this act, shall become operative.

SEC. 34.5. Section 3.5 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill and AB 3413. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 1250 of the Health and Safety Code, and (3) this bill is enacted after AB 3413, in which case Section 1250 of the Health and Safety Code, as amended by AB 3413, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 35. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 36. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Medi-Cal program is a primary payor of long-term care in California for over 60 percent of all reimbursement to nursing homes, and in order to continue Medi-Cal reimbursement to California nursing homes and to ensure the continued health and safety of California's elderly and infirm, it is necessary that this act take effect immediately.

CHAPTER 1330

An act to amend Sections 11165.12 and 11170 of the Penal Code, relating to crimes.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 11165.12 of the Penal Code is amended to read:

11165.12. As used in this article, the following definitions shall control:

(a) "Unfounded report" means a report which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse, as defined in Section 11165.6.

(b) "Substantiated report" means a report which is determined by a child protective agency investigator, based upon some credible evidence, to constitute child abuse or neglect, as defined in Section 11165.6.

(c) "Unsubstantiated report" means a report which is determined by a child protective agency investigator not to be unfounded, but in which the findings are inconclusive and there is insufficient evidence to determine whether child abuse or neglect, as defined in Section 11165.6, has occurred.

SEC. 2. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the

investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 226 of the Civil Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

SEC. 2.5. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded or which have been destroyed under Section 11169. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

No other public agency, except law enforcement agencies and state and local agencies responsible for licensing child care facilities, shall maintain an index of child abuse reports

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318, of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section

11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 226 of the Civil Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(c) A school district shall not retain, collect, or otherwise possess any child abuse reports naming a child care custodian as perpetrator which have been determined to be unfounded as defined in Section 11165.12. Any of these unfounded reports in the possession or custody of any school district on January 1, 1991, shall be destroyed on or before January 15, 1991, or within 15 days after it has been determined to be unfounded and no copies may be made or retained by the school district. A school district shall be liable to any aggrieved child care custodian for damages and reasonable attorney's fees for violations of this subdivision.

A child protective agency shall advise the school district whenever a report of child abuse involving a child care custodian is deemed to be founded.

No report of suspected child abuse which names a child care custodian as perpetrator shall be retained by any public or private school district, nor may it be retained in any individual school files. However, if any reported incidents of child abuse form the basis for disciplinary action, the school or school district may maintain its customary record of the incidents in accordance with a memorandum of understanding adopted pursuant to Chapter 10.7

(commencing with Section 3540) of Division 4 of Title 1 of the Government Code, but under no circumstances shall the record include any report of suspected child abuse pursuant to the Child Abuse Reporting Act.

SEC. 2.6. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318, of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 222.70, 224.30, 226.52, or 227.10 of the Civil Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible

for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

SEC. 2.7. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded or which have been destroyed under Section 11169. The department may adopt rules governing recordkeeping and reporting pursuant to this article

No other public agency, except law enforcement agencies and state and local agencies responsible for licensing child care facilities, shall maintain an index of child abuse reports.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318, of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 222.70, 224.30, 226.52, or 227.10 of the Civil Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if

investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(c) A school district shall not retain, collect, or otherwise possess any child abuse reports naming a child care custodian as perpetrator which have been determined to be unfounded as defined in Section 11165.12. Any of these unfounded reports in the possession or custody of any school district on January 1, 1991, shall be destroyed on or before January 15, 1991, or within 15 days after it has been determined to be unfounded and no copies may be made or retained by the school district. A school district shall be liable to any aggrieved child care custodian for damages and reasonable attorney's fees for violations of this subdivision.

A child protective agency shall advise the school district whenever a report of child abuse involving a child care custodian is deemed to be founded.

No report of suspected child abuse which names a child care custodian as perpetrator shall be retained by any public or private school district, nor may it be retained in any individual school files. However, if any reported incidents of child abuse form the basis for disciplinary action, the school or school district may maintain its customary record of the incidents in accordance with a memorandum of understanding adopted pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, but under no circumstances shall the record include any report of suspected child abuse pursuant to the Child Abuse Reporting Act.

SEC. 3. (a) Section 2.5 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by both this bill and AB 2716. It shall only become operative if (1) both bills are enacted and become effective January 1, 1991, (2) each bill amends Section 11170 of the Penal Code, and (3) AB 3532 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2716, in which case Sections 2, 2.6, and 2.7 of this bill shall not become operative.

(b) Section 2.6 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by both this bill and AB 3532. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 11170 of the Penal Code, (3) AB 2716 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3532, in which case Section 11170 of the Penal Code, as amended by Section 2 of this bill shall become operative January 1, 1991, and shall remain operative only until July 1, 1991, at which time Section 2.6 of this bill shall

become operative, and Sections 2.5 and 2.7 of this bill shall not become operative.

(c) Section 2.7 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by this bill, AB 2716, and AB 3532. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1991, (2) all three bills amend Section 11170 of the Penal Code, and (3) this bill is enacted after AB 2716 and AB 3532, in which case Section 11170 of the Penal Code, as amended by Section 2.5 of this bill shall become operative January 1, 1991, and shall remain operative only until July 1, 1991, at which time Section 2.7 of this bill shall become operative, and Sections 2 and 2.6 of this bill shall not become operative.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1331

An act relating to child care, and making an appropriation therefor.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Child care resource and referral agencies offer valuable services to working families in their communities, including: assistance to parents in their child care search; documenting child care supply and demand; providing assistance to new and existing child care providers; and, educating the community about child care needs and available services.

Basic funding allocations for the majority of California's 65 resource and referral agencies have not been augmented since their initial funding. Over the past five years, the volume of requests for resource and referral services has increased 33 percent due to the increase in working mothers, rising birthrates, and a 20 percent growth in the child care provider market. These conditions have placed new demands on existing resource and referral services.

Telephone busy studies document the increasing difficulty for parents to get through to resource and referral counselors on heavily impacted telephone lines. Accordingly, state support for this statewide program should be increased.

SEC. 2. (a) The sum of nine hundred thousand dollars ($900,000) is hereby appropriated from the the contingency reserve established pursuant to Section 12.31 of the Budget Act of 1990, notwithstanding the limitations contained therein, to the State Department of Education for allocation to the child care resource and referral agencies to provide for the cost of augmented services.

(b) Funding priority shall be given to resource and referral agencies which demonstrate the need for augmented funding based on one or more of the following criteria, including, but not limited to, any of the following:

(1) Women's labor force participation rates.

(2) Child population.

(3) Size of licensed child care market.

(4) Current capacity to meet the demand.

CHAPTER 1332

An act to add Section 11605 to the Health and Safety Code, relating to drug and alcohol use.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 11605 is added to the Health and Safety Code, to read:

11605. (a) Commencing with the 1991–92 fiscal year, the Attorney General, in consultation with the Governor's Policy Council on Alcohol and Drug Abuse, shall conduct a biennial survey of drug and alcohol use among pupils enrolled in grades 7, 9, and 11. The survey shall assess all of the following:

(1) The frequency and type of substance abuse.

(2) The age of first use and intoxication.

(3) Pertinent attitudes and experiences of pupils.

(4) The experience of pupils with school-based drug and alcohol prevention programs.

(5) As an optional component, the survey may examine the risk factors associated with school dropouts.

(b) The biennial survey shall be based on a statewide sample of pupils enrolled in grades 7, 9, and 11 and shall be consistent with the surveys conducted by the office of the Attorney General in the 1985–86, 1987–88, and 1989–90 fiscal years.

(c) The Attorney General shall release the findings of the survey

on or before May of each even-numbered year and shall prepare and distribute a report on the survey to the Legislature, the Governor, the Superintendent of Public Instruction, law enforcement agencies, school districts, and interested members of the general public.

(d) In conducting the survey, the Attorney General shall ensure that the confidentiality of participating school districts and pupils shall be maintained. Pupil questionnaires and answer sheets shall be exempt from the public disclosure requirements prescribed by Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(e) Persons reporting data pursuant to the requirements of this article shall not be liable for damages in any action based upon the use or misuse of pupil surveys that are mailed or otherwise transmitted to the Attorney General, or his or her designee.

(f) The requirements prescribed by this article shall continue to be funded with the existing resources of the Attorney General.

CHAPTER 1333

An act to amend Section 199.715 of, and to add Chapter 3.01 (commencing with Section 1568.01) to Division 2 of the Health and Safety Code, relating to health.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 199.715 of the Health and Safety Code is amended to read:

199.715. The state department may approve up to 35 pilot projects to provide housing and food for homeless persons who have AIDS or ARC. The state department may provide funding to a selected number these pilot projects. All approved pilot projects shall enter into a contract with the state department, which shall define the conditions for participation as pilot projects. Notwithstanding Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2, an approved pilot project shall not be required to be licensed if it is organized and operated for the purpose of providing room and board to homeless persons with AIDS or ARC and it is not organized and operated to directly provide medical or nursing care.

The pilot projects shall maintain a written agreement for referral and acceptance of residents with at least one registered nurse case manager, general acute care hospital, and licensed home health agency. The contract requirements for the pilot projects shall include the criteria and protocols which the state department determines are appropriate to assure that the health, safety, and

welfare of residents are protected. The state department may additionally provide for or enter into a contract for evaluation and assessment related to the approved pilot projects.

This chapter shall not preempt the application of any local zoning requirements in effect on January 1, 1990, to a residential AIDS shelter pilot project for homeless persons with AIDS or ARC.

The implementation of these pilot projects shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

This section shall become inoperative on July 1, 1993, and as of January 1, 1994, is repealed, unless a later enacted statute which becomes effective on or before January 1, 1994, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 1.5. Chapter 3.01 (commencing with Section 1568.01) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 3.01. RESIDENTIAL CARE FACILITIES FOR PERSONS WITH CHRONIC LIFE-THREATENING ILLNESS

1568.01. For purposes of this chapter, the following definitions shall apply:

(a) "Activities of daily living" means housework, meals, laundry, taking medication, money management, appropriate transportation, correspondence, telephoning, dressing, feeding, toileting, bathing, grooming, mobility, and related tasks.

(b) "Care and supervision" means the facility assumes responsibility for, or provides or promises to provide in the future, ongoing assistance with activities of daily living without which a resident's physical health, mental health, safety, or welfare would be endangered.

(c) "Chronic, life-threatening illness" means either or both of the following:

(1) An illness where the likelihood of death is high unless the course of the disease is interrupted.

(2) An illness with a potentially fatal outcome, where the end point of clinical intervention is survival.

(d) "Department" means the State Department of Social Services.

(e) "Director" means the Director of Social Services.

(f) "Family dwelling" includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

(g) "Fund" means the Residential Care Facilities for Persons with Chronic Life-Threatening Illness Fund created by subdivision (c) of Section 1568.05.

(h) "Placement agency" means any state agency, county agency,

or private agency which receives public funds, in part, to identify housing options for persons with chronic, life-threatening illness and refers these persons to housing.

(i) "Residential care facility" means a residential care facility for persons with chronic, life-threatening illness who are 18 years of age or older.

(j) "Six or fewer persons" does not include the licensee or members of the licensee's family or persons employed as facility staff.

1568.02. (a) The department shall license residential care facilities for persons with chronic, life-threatening illness under a separate category.

(b) The licensee of every facility required to be licensed pursuant to this chapter shall provide the following basic services for each resident:

(1) Room and board. No more than two residents shall share a bedroom, except that the director, in his or her discretion, may waive this limitation.

(2) Access to adequate common areas, including recreation areas and shared kitchen space with adequate refrigerator space for the storage of medications.

(3) Consultation with a nutritionist, including consultation on cultural dietary needs.

(4) Personal care services, as needed, including, but not limited to, activities of daily living. A facility may have a written agreement with another agency to provide personal care services, except that the facility shall be responsible for meeting the personal care needs of each resident.

(5) Access to case management for social services. A facility may have a written agreement with another agency to provide case management.

(6) Development, implementation, and monitoring of an individual services plan. All health services components of the plan shall be developed and monitored in coordination with the home health agency and shall reflect the elements of the resident's plan of treatment developed by the home health agency.

(7) Intake and discharge procedures, including referral to outplacement resources.

(8) Access to psychosocial support services.

(9) Access to community-based and county services system.

(10) Access to a social and emotional support network of the resident's own choosing, within the context of reasonable visitation rules established by the facility.

(11) Access to intermittent home health care services in accordance with paragraph (1) of subdivision (c).

(12) Access to substance abuse services in accordance with paragraph (3) of subdivision (c).

(13) Adequate securable storage space for personal items.

(c) The licensee of every facility required to be licensed pursuant to this chapter shall demonstrate, at the time of application, all of the

following:

(1) Written agreement with a licensed home health agency.

(2) Written agreement with a psychosocial services agency, unless the services are provided by the facility's professional staff.

(3) Written agreement with a substance abuse agency, unless the services are provided by the facility's professional staff.

(4) Ability to provide linguistic services for residents who do not speak English.

(5) Ability to provide culturally appropriate services.

(6) Ability to reasonably accommodate residents with physical disabilities, including, but not limited to, residents with motor impairments, physical access to areas of the facility utilized by residents, and access to interpreters for hearing-impaired residents.

(7) Written nondiscrimination policy which shall be posted in a conspicuous place in the facility.

(8) Written policy on drug and alcohol use, including, but not limited to, a prohibition on the use of illegal substances.

(d) Any facility licensed pursuant to this chapter which intends to serve a specific population, such as women, minority and ethnic populations, or homosexual men or women, shall demonstrate, at the time of application, the ability and resources to provide services that are appropriate to the targeted population.

(e) No facility licensed pursuant to this chapter shall house more than 25 residents, except that the director, by regulation developed by the department, may authorize a facility to house up to 50 residents.

1568.021. (a) If the applicant for a license or renewal of a license for a residential care facility handles or will handle any money of a resident of the facility, the applicant or licensee shall file or have on file with the department a bond issued by a surety company admitted to do business in this state in a sum to be fixed by the department based upon the magnitude of the operations of the applicant or licensee, but which sum shall not be less than one thousand dollars ($1,000), running to the State of California and conditioned upon his or her faithful and honest handling of the money of residents of the facility.

(b) The failure of any licensee under this chapter to maintain on file with the department a bond in the amount prescribed by the department or the embezzlement by a licensee of trust funds of a resident of the facility shall constitute cause of the revocation of the license.

(c) This section shall not apply if the licensee handles moneys of residents of the facility in amounts less than fifty dollars ($50) per person and less than five hundred dollars ($500) for all persons in any month.

(d) The director may grant a partial or total variance from the requirements of this section if the director finds that compliance with them is so onerous that a residential care facility will cease to operate, and if the director also finds that money of the residents

received or cared for in the facility has been, or will be, deposited in a bank in this state, in a trust company authorized to transact a trust business in this state, or in a savings and loan association in this state, upon condition that the money may not be withdrawn except on authorization of the person or a representative who is legally authorized to make financial decisions on behalf of the person.

1568.03. (a) No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a residential care facility in this state without first obtaining and maintaining a valid license therefor, as provided in this chapter.

(b) A facility may accept or retain residents requiring varying levels of care. However, a facility shall not accept or retain residents who require a higher level of care than the facility is authorized to provide. Persons who require 24-hour skilled nursing intervention shall not be appropriate for a residential care facility.

(c) This chapter shall not apply to the following:

(1) Any health facility, as defined in Section 1250.

(2) Any clinic, as defined in Section 1200.

(3) Any arrangement for the receiving and care of persons with chronic, life-threatening illness by a relative, guardian or conservator, significant other, or close friend; or any arrangement for the receiving and care of persons with chronic, life-threatening illness from only one family as respite for the relative, guardian or conservator, significant other, or close friend, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department.

(d) The director may waive the requirement for licensure under this chapter for any house, institution, hotel, foster home, shared housing project, or other similiar facility that is limited to providing housing, meals, transportation, housekeeping, or recreational and social activities, or that has residents independently accessing supportive services as long as no resident thereof requires any element of care and supervision or protective supervision.

1568.04. Any person desiring issuance or renewal of a license for a residential care facility under this chapter shall file with the department, pursuant to regulations adopted by the department, an application. The application shall be provided on a form furnished by the department, which shall include, but not be limited to, all of the following:

(a) Evidence satisfactory to the department of all of the following:

(1) The ability of the applicant to comply with this chapter and of rules and regulations adopted pursuant to this chapter by the department. Where there is an application for renewal of a license, evidence satisfactory to the department that the licensee has substantially complied, during the term of the previous license, with this chapter and with the rules and regulations adopted pursuant to this chapter.

(2) The applicant has sufficient financial resources to maintain

the standards of service required by regulations adopted pursuant to this chapter.

(3) Following the department's adoption of regulations specifying the levels of care to be provided under this chapter, the applicant's ability to meet regulatory requirements for the level of care the facility intends to provide.

(4) Compliance or ability to comply with Section 1568.02.

(b) Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in, any residential care facility or in any clinic or facility licensed pursuant to Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), or Chapter 3 (commencing with Section 1500).

(c) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in subdivision (b).

(d) Any other information as may be required by the department for the proper administration and enforcement of this chapter.

(e) A signed statement that the person desiring issuance or renewal of a license has read this chapter and the regulations adopted pursuant to this chapter and understands the statute and regulations applicable to a residential care facility.

1568.05. (a) An annual fee adjusted by facility and capacity shall be charged by the department for the issuance or renewal of a license to operate a residential care facility or for processing any application therefor The fee shall be assessed as follows:

Capacity	Annual Fee
1– 6	$200 plus $8 per bed
7–15	$250 plus $8 per bed
16–25	$300 plus $8 per bed
26–50	$350 plus $8 per bed

(b) No local governmental entity shall impose any business license, fee, or tax for the privilege of operating a facility licensed under this chapter which serves six or fewer persons.

(c) All fees collected pursuant to subdivision (a) shall be deposited in the Residential Care Facilities for Persons with Chronic, Life-Threatening Illness Fund, which is hereby created in the State Treasury. Moneys in the fund, upon an appropriation made in the annual Budget Act, shall be available to the department for the purposes specified in subdivision (d).

(d) The fund may be used for the purpose of financing a portion of the license and renewal application processing costs. In addition, the fund may be utilized by the department to finance postlicensure inspections pursuant to Section 1568.07, to allow increased monitoring of facilities with a history of noncompliance with this chapter and regulations adopted pursuant to this chapter, and other

administrative activities in support of the licensing program administered pursuant to this chapter. The revenues collected in the fund shall be used in addition to any other moneys appropriated for the purposes specified in this subdivision.

(e) Fees established pursuant to this section shall not be effective unless licensing fees are established for all adult residential facilities licensed by the department.

(f) A residential care facility may use a bona fide business check to pay the license fee required under this section.

(g) Failure to pay required license fees, including the finding of insufficient funds to cover bona fide business checks submitted for this purpose, may constitute grounds for denial of a license or refusal to renew a license.

1568.06. (a) Upon initial application for licensure, residential care facilities shall be provided a printed copy of all applicable regulations for the operation of these facilities by the department, without charge. The department shall provide all licensees with copies of proposed changes in regulations applicable to residential care facilities prior to public hearings on those proposed changes, and copies of all adopted changes in regulations applicable for residential care facilities for persons with HIV immediately upon their adoption.

(b) As a requirement for licensure, an applicant shall attend a two-day orientation given by the department which outlines the applicable rules and regulations and the scope and responsibility for operation of a residential care facility for persons with HIV. The orientation shall include information on relevant community services.

1568.061. (a) Each new license issued pursuant to this chapter shall expire 12 months from the date of its issuance.

(b) A renewal license may be issued for a period not to exceed two years, provided the licensee has been found not to be in violation of this chapter or any rules or regulations adopted pursuant to this chapter during the preceding license period.

(c) Application for renewal of a license shall be filed with the department pursuant to departmental rules and regulations

(d) A license shall be forfeited by operation of law prior to its expiration date when one of the following occurs:

(1) The licensee sells or otherwise transfers the facility or the real property on which the facility is located, except when change of ownership applies to transferring of stock when the facility is owned by a corporation and when the transfer of stock does not constitute a majority change in ownership.

(2) The licensee surrenders the license to the department.

(3) The licensee moves a facility from one location to another. The department shall develop regulations to ensure that a licensee is not charged a full licensing fee and is not required to complete the entire application process when applying for a license for the new location.

(4) The licensee is convicted of an offense specified in Section 220, 243.4, or 264 1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.

(5) The licensee dies. When a licensee dies, the continued operation shall be subject to the requirements of Section 1568.064.

1568.062. (a) Upon the filing of the application for issuance or renewal of a license and substantial compliance with this chapter and the rules and regulations of the department adopted pursuant to this chapter, the director shall issue to the applicant the license to operate a residential care facility. If the director finds that the applicant is not in compliance with this chapter or the regulations adopted pursuant to this chapter, the director shall deny the applicant a license or license renewal.

(b) The director may issue provisional licenses to operate residential care facilities for any facility which the director determines is in substantial compliance with this chapter and the rules and regulations adopted pursuant to this chapter, provided that no life safety risks are involved, as determined by the director. In determining whether any life safety risks are involved, the director shall require completion of all applicable fire clearances and criminal record clearances as otherwise required by the department's rules and regulations. A provisional license issued pursuant to this subdivision shall expire six months from the date of issuance, or at an earlier time as the director may determine, and may not be renewed. However, the director may extend the term of a provisional license for an additional six months at the time of application, if it is determined that more than six months will be required to achieve full compliance with licensing standards due to circumstances beyond the control of the applicant, and if all other requirements for a license have been met.

1568.063. Immediately upon the denial of any application for a license, the department shall notify the applicant in writing. Within 15 days after the department mails the notice of denial, the applicant may present his or her written petition for a hearing to the department Upon receipt by the department of the petition in proper form, the petition shall be set for hearing. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department has all the powers granted therein.

1568.064. (a) When a licensee dies, an adult relative who has control of the property may continue operation of the facility if the following conditions are met:

(1) The department receives notification of the death during the next normal workday and is informed of the relative's intent to continue operating the facility as a residential care facility for persons with chronic, life-threatening illnesses.

(2) The relative files application, within five days of the date of death, shows evidence satisfactory to the department that he or she

has the ability to operate the facility, submits his or her fingerprint card, and provides evidence of the licensee's death.

(b) The department shall make a decision within 60 days after the application is submitted on whether to issue a provisional license pursuant to Section 1568.062. A provisional license shall be granted only if the department is satisfied that the conditions specified in subdivision (a) have been met and that the health and safety of the residents of the facility will not be jeopardized.

(c) If the relative complies with subdivision (a), he or she shall not be considered to be operating an unlicensed facility while the department decides whether to grant the provisional license.

1568.07. (a) (1) Within 90 days of initial licensure, the department shall inspect the facility to evaluate compliance with rules and regulations and to assess the facility's continuing ability to meet regulatory requirements.

(2) The department may take appropriate remedial action as provided for in this chapter.

(b) (1) Every licensed residential care facility shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director. Evaluations shall be conducted at least annually and as often as necessary to ensure the quality of care being provided.

(2) During each licensing inspection the department shall determine if the facility meets regulatory standards, including, but not limited to, providing residents with the appropriate level of care based on the facility's license, providing adequate staffing and services, updated resident records and assessments, and compliance with basic health and safety standards.

(3) If the department determines that a resident requires a higher level of care than the facility is authorized to provide, the department may initiate a professional level of care assessment by an assessor approved by the department. An assessment shall be conducted in consultation with the resident, the resident's physician and surgeon, and the resident's case manager, and shall reflect the desires of the resident, the resident's physician and surgeon, and the resident's case manager. The assessment also shall recognize that certain illnesses are episodic in nature and that the resident's need for a higher level of care may be temporary.

(4) The department shall notify the residential care facility in writing of all deficiencies in its compliance with this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

(5) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection in the county in which the facility is located.

(c) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter

and inspect a licensed residential care facility or a residential care facility which has applied to be licensed, at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, this chapter.

1568.071. (a) Any person may request an inspection of any residential care facility in accordance with this chapter by transmitting to the department notice of an alleged violation of applicable requirements prescribed by statutes or regulations of this state.

(b) The substance of the complaint shall be provided to the licensee no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee nor any copy of the complaint or any record published, released, or otherwise made available to the licensee shall disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter.

(c) Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a residential care facility, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection within 10 days after receiving the complaint except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies. In either event, the complainant shall be promptly informed of the department's proposed course of action.

(d) Upon receipt of a complaint alleging denial of a statutory right of access to a residential facility, the department shall review the complaint. The complainant shall be notified promptly of the department's proposed course of action.

1568.072. (a) The department shall adopt, amend, and repeal, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any reasonable rules, regulations, and standards as may be necessary or proper to carry out the purposes and intent of this chapter and to enable the department to exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with state law.

(b) Regulations for a license shall prescribe standards of safety and sanitation, for the physical plant, as well as for the basic care and supervision, personal care, and services to be provided by a facility.

(c) Regulations shall specify the application and licensing process, the range of services, alternative methods for providing those services, the appraisal and assessment process, facility staffing and training requirements, and the process for administering the supplemental rate required by Section 1568.03.

(d) Regulations shall allow for the development of new and

innovative community programs.

1568.073. (a) (1) The department may order the licensee to remove a resident who has a health condition which cannot be cared for within the limits of the license or requires inpatient care in a health facility as determined by the department pursuant to Section 1568.07.

(2) When the department determines that the resident's mental or physical condition requires immediate transfer from the facility in order to protect the health and safety of the resident, the department may order the licensee to remove the resident after the department consults with a physician or other medical professional about the transfer and ways in which transfer trauma can be minimized.

(b) (1) When the department determines that a resident has a health condition which cannot be cared for within the limits of the license or requires inpatient care in a health facility, the department shall give notice to the resident, his or her legal representative when appropriate, his or her physician when applicable, his or her case manager when applicable, and the licensee. The notice shall specify a deadline for submitting a written plan for relocation and inform the resident of his or her right for a review and determination. The resident, or his or her legal representative, shall have three working days to inform the licensee of the request for review. The licensee shall forward the request to the department within two working days of receipt. Failure or refusal by the licensee to submit the request to the department may subject the licensee to the civil penalties as specified in Section 1568.0822. The department shall not refuse to consider the request if the licensee fails or refuses to submit the request to the department.

(2) The review and determination shall be completed within 30 days from the date that the resident was initially informed of the need to relocate. If the determination is made that the resident must relocate, the notice shall include a plan for transfer including ways to minimize transfer trauma for the resident.

(3) The department may require the licensee to prepare and submit to the department a written plan for relocation, to comply with the terms and conditions of the approved plan, and to provide other information as necessary for the enforcement of this section.

(c) The provisions allowing for a resident's right to a review prior to transfer as provided in subdivision (b) neither negates the department's authority and responsibility to require an immediate transfer according to paragraph (2) of subdivision (a) when the department finds and provides evidence that the resident must be relocated in order to protect the health and safety of the resident, nor implies any right to a fair hearing pursuant to Chapter 7 (commencing with Section 10950) of Part 2 of Division 9 of the Welfare and Institutions Code.

(d) The department shall specify by regulation the process for making relocation decisions and for appealing and reviewing those decisions pursuant to this section.

1568.08. Each facility required to be licensed under this chapter shall keep a current record of all of the following:

(a) Residents in the facility, including each resident's name and ambulatory status.

(b) The name and telephone number of each resident's physician and surgeon.

(c) The name, address, and telephone number of any person or agency responsible for the care of a resident.

(d) Updated resident file records, including, but not limited to, the current physician and surgeon report, residential appraisal, level of services required and documentation of any health related services provided to residents.

The facility shall respect the privacy and confidentiality of this information.

1568.081. (a) A placement agency shall place individuals only in licensed residential care facilities or facilities which are exempt from licensure under subdivision (c) of Section 1568.03.

(b) No employee of a placement agency shall place, refer, or recommend placement of a person in a facility operating without a license, unless the facility is exempt from licensure under subdivision (c) of Section 1568.03. Violation of this subdivision is a misdemeanor.

(c) Any employee of a placement agency who knows, or reasonably suspects that a facility, which is not exempt from licensure under this chapter, is operating without a license shall report the name and address of the facility to the department. Failure to report as required by this subdivision is a misdemeanor.

(d) The department shall investigate any report filed under subdivision (c). If the department has probable cause to believe that the facility which is the subject of the report is operating without a license, the department shall investigate the facility within 10 days after receipt of the report.

(e) A placement agency shall notify the department of any known or suspected incidents which would jeopardize the health or safety of residents in a residential care facility. Reportable incidents include, but are not limited to, all of the following:

(1) Incidents of physical abuse.

(2) Any violation of personal rights.

(3) Any situation in which a facility is unclean, unsafe, unsanitary, or in poor condition.

(4) Any situation in which a facility has insufficient personnel or incompetent personnel on duty.

(5) Any situation in which residents experience mental or verbal abuse.

(6) Any situation in which a facility is suspected of accepting or retaining residents who require a higher level of care than the facility is authorized to provide.

1568.082. (a) The department may suspend or revoke any license issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

(1) Violation by the licensee of this chapter or of the rules and regulations adopted pursuant to this chapter.

(2) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations adopted pursuant to this chapter.

(3) Conduct which is inimical to the health, welfare, or safety of either an individual in or receiving services from the facility or the people of the State of California.

(4) The provision of services beyond the level the facility is authorized to provide, or accepting or retaining residents who require services of a higher level than the facility is authorized to provide.

(b) The director may temporarily suspend any license, prior to any hearing when, in the opinion of the director, the action is necessary to protect residents of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee of the temporary suspension and the effective date of the temporary suspension, and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible, but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

1568.0821. (a) Notwithstanding any other provision of this chapter, any person who violates Section 1568.03 shall be assessed by the department an immediate civil penalty in the amount of one hundred dollars ($100) per resident for each day of the violation.

(b) The civil penalty authorized in subdivision (a) shall be two hundred dollars ($200) per resident for each day of the violation if an unlicensed facility is operated and the operator refuses to seek licensure or the operator seeks licensure and the licensure application is denied and the operator continues to operate the unlicensed facility.

(c) An operator may appeal the assessment to the director. The department shall adopt regulations setting forth the appeal procedure.

1568.0822. (a) In addition to suspension or revocation of a license issued under this chapter, the department may levy a civil penalty in addition to the penalties of suspension or revocation. The department shall adopt regulations setting forth the appeal procedures for deficiencies.

(b) The amount of the civil penalty shall not be less than twenty-five dollars ($25) or more than fifty dollars ($50) per day for each violation of this chapter, except where the nature or seriousness of the violation or the frequency of the violation warrants a higher

penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event shall a civil penalty assessment exceed one hundred fifty dollars ($150) per day.

(c) Notwithstanding Section 1568.07, any residential care facility that is cited for repeating the same violation of this chapter within 12 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars ($150) and fifty dollars ($50) for each day the violation continues until the deficiency is corrected.

(d) Any residential care facility that is assessed a civil penalty pursuant to subdivision (c) which repeats the same violation of this chapter within 12 months of the violation subject to subdivision (c) shall be assessed an immediate civil penalty of one thousand dollars ($1,000) and one hundred dollars ($100) for each day the violation continues until the deficiency is corrected, provided that the violation is a serious violation.

(e) The department shall adopt regulations implementing this section.

1568.083. (a) The department, State Fire Marshal, or local fire officials shall not make a de facto determination of a resident's ambulatory or nonambulatory status based on a resident's placement in the facility. Interpretation of regulations related to fire safety in residential care facilities shall be made to provide flexibility to allow residents to remain in the least restrictive environment.

(b) This chapter shall not preempt the application of any local zoning requirements to residential care facility, except as provided for in Section 1568.0831.

1568.0831. (a) (1) Whether or not unrelated persons are living together, a residential care facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this chapter. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this chapter.

(2) For the purpose of all local ordinances, a residential care facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential care facility is a business run for profit or differs in any other way from a family dwelling.

(3) This section shall not be construed to prohibit any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential care facility which serves six or fewer persons as long as the restrictions are identical to those applied to other family dwellings of the same type in the same zone.

(4) This section shall not be construed to prohibit the application to a residential care facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiciton of a local public

entity if the ordinance does not distinguish residential care facilities which serve six or fewer persons from other family dwellings of the same type in the same zone and if the ordinance does not distinguish residents of residential care facilities from persons who reside in other family dwellings of the same type in the same zone.

(5) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential care facility which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone.

(6) Use of a family dwelling for purposes of a residential care facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent these sections are applicable to residential care facilities serving six or fewer persons.

(b) No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to a residential care facility because of a failure to comply with local ordinances from which the facilities are exempt under subdivision (a), provided that the applicant otherwise qualifies for the fire clearance, license, permit, or similar authorization.

(c) For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, a residential care facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.

1568.09. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with residents of residential care facilities for persons with chronic, life-threatening illness may pose a risk to the residents' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (e).

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine

contact with the residents. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, friend or family member and provides direct care and supervision to that resident only at the request of the resident. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with residents shall be exempt.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the licensing agency not later than 20 days following employment, residence, or initial presence in the residential care facility. Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (e). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the persons' employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (e). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(e) After review of the record, the director may grant an exemption from disqualification for a license pursuant to subdivision (a), or for employment, residence, or presence in a residential care facility as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, or paragraph (1) of Section 273a or Section 273d, or Section 288 or 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(f) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

SEC. 2. Any regulations required to be adopted by the department pursuant to this act shall be adopted as emergency regulations on or before March 31, 1991, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except that for the purpose of adopting emergency regulations, any regulations adopted pursuant to this chapter are hereby deemed to be necessary for the immediate preservation of the public peace, health and safety or general welfare, and no additional findings to that effect shall be required.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1334

An act to amend Section 17980.7 of the Health and Safety Code, relating to substandard buildings.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 17980.7 of the Health and Safety Code is amended to read:

17980.7. If the owner fails to comply with the terms of the order or notice pursuant to Section 17980.6, the following provisions shall apply:

(a) The enforcement agency may seek and the court shall order imposition of the penalties provided for under Chapter 6 (commencing with Section 17995).

(b) The enforcement agency may seek and the court may order the owner to not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation, or amortization paid or incurred with respect to the cited structure, in the taxable year of the initial order or notice, in lieu of the enforcement agency processing a violation in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code.

If the owner fails to comply with the terms of the order or notice to correct the condition that caused the violation pursuant to subdivision (a) of Section 17980.5, the court may order the owner to not claim these tax benefits for the following year.

(c) The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to the provisions of this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was served not less than three days prior to filing the petition, pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists.

(1) In appointing a receiver, the court shall consider whether the owner has been afforded a reasonable opportunity to correct the

conditions cited in the notice of violation.

(2) The court shall not appoint any person as a receiver unless the person has demonstrated to the court his or her capacity and expertise to develop and supervise a viable financial and construction plan for the satisfactory rehabilitation of the building.

(3) If a receiver is appointed, the owner and his or her agent of the substandard building shall be enjoined from collecting rents from the tenants, interfering with the receiver in the operation of the substandard building, and encumbering or transferring the substandard building or real property upon which the building is situated.

(4) Any receiver appointed pursuant to this section shall have all of the following powers and duties in the order of priority listed in this paragraph, unless the court otherwise permits:

(A) To take full and complete control of the substandard property.

(B) To manage the substandard building and pay expenses of the operation of the substandard building and real property upon which the building is located, including taxes, insurance, utilities, general maintenance, and debt secured by an interest in the real property.

(C) To secure a cost estimate and construction plan from a licensed contractor for the repairs necessary to correct the conditions cited in the notice of violation.

(D) To enter into contracts and employ a licensed contractor as necessary to correct the conditions cited in the notice of violation.

(E) To collect all rents and income from the substandard building.

(F) To use all rents and income from the substandard building to pay for the cost of rehabilitation and repairs determined by the court as necessary to correct the conditions cited in the notice of violation.

(G) To borrow funds to pay for repairs necessary to correct the conditions cited in the notice of violation and to borrow funds to pay for any relocation benefits authorized by paragraph (6) and secure that debt, with court approval, with a lien on the real property upon which the substandard building is located. The lien shall be recorded in the county recorder's office in the county within which the building is located.

(H) To exercise the powers granted receivers under Section 568 of the Code of Civil Procedure.

(5) The receiver shall be entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages.

(6) If the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the substandard building by any tenant, to the extent that the tenant cannot safely reside in his or her unit, then the receiver shall provide relocation benefits in accordance with subparagraph (A) of paragraph (3) of subdivision (d)

(7) The relocation compensation provided for in this section shall not preempt any local ordinance that provides for greater relocation

assistance.

(8) In addition to any reporting required by the court, the receiver shall prepare monthly reports to the state or local enforcement agency which shall contain information on at least the following items:

(A) The total amount of rent payments received.

(B) Nature and amount of contracts negotiated relative to the operation or repair of the property.

(C) Payments made toward the repair of the premises.

(D) Progress of necessary repairs.

(E) Other payments made relative to the operation of the building.

(F) Amount of tenant relocation benefits paid.

(9) The receiver shall be discharged when the conditions cited in the notice of violation have been remedied in accordance with the court order or judgment and a complete accounting of all costs and repairs has been delivered to the court. Upon removal of the condition, the owner, the mortgagee, or any lienor of record may apply for the discharge of all moneys not used by the receiver for removal of the condition and all other costs authorized by this section.

(10) The prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs as may be fixed by the court.

(11) The county recorder may charge and collect fees for the recording of all notices and other documents required by this section pursuant to Article 5 (commencing with Section 27360) of Chapter 6 of Division 2 of Title 3 of the Government Code.

(12) Nothing in this section shall be construed to limit those rights available to tenants and owners under any other provision of the law.

(13) Nothing in this section shall be construed to deprive an owner of a substandard building of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders which are issued by the enforcement agency or the court.

(d) If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to subdivision (a) of Section 17980.6, upon the entry of any order or judgment the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.

(2) Order that the local enforcement agency shall provide the tenant with notice of the court order or judgment.

(3) (A) Order that if the owner undertakes repairs or rehabilitation as a result of being cited for a notice under this

chapter, and if the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the premises by any lawful tenant, such that the tenant cannot safely reside in the premises, then the owner shall provide or pay relocation benefits to each lawful tenant. These benefits shall consist of actual reasonable moving and storage costs and relocation compensation. The actual moving and storage costs shall consist of all of the following:

(i) Transportation of the tenant's personal property to the new location. The new location shall be in close proximity to the substandard premises, except where relocation to a new location beyond a close proximity is determined by the court to be justified.

(ii) Packing, crating, unpacking, and uncrating the tenant's personal property.

(iii) Insurance of the tenant's property while in transit.

(iv) The reasonable replacement value of property lost, stolen, or damaged (not through the fault or negligence of the displaced person, his or her agent or employee) in the process of moving, where insurance covering such loss, theft, or damage is not reasonably available.

(v) The cost of disconnecting, dismantling, removing, reassembling, reconnecting, and reinstalling machinery, equipment, or other personal property of the tenant, including connection charges imposed by utility companies for starting utility service.

The relocation compensation shall be an amount equal to the differential between the contract rent and the fair market rental value determined by the federal Department of Housing and Urban Development for a unit of comparable size within the area for the period that the unit is being repaired, not to exceed 120 days.

If the court finds that a tenant has been substantially responsible for causing or substantially contributing to the substandard conditions, then the relocation benefits of this section shall not be paid to this tenant. Each other tenant on the premises who has been ordered to relocate due to the substandard conditions and who is not substantially responsible for causing or contributing to the conditions shall be paid these benefits and moving costs at the time that he or she actually relocates.

(B) Determine the date when the tenant is to relocate, and order the tenant to notify the enforcement agency and the owner of the address of the premises to which he has relocated within five days after the relocation.

(C) Order that the owner shall offer the first right to occupancy of the premises to each tenant who received benefits pursuant to subparagraph (A), before letting the unit for rent to a third party. The owner's offer on the first right to occupancy to the tenant shall be in writing, and sent by first-class certified mail to the address given by the tenant at the time of relocation. If the owner has not been provided the tenant's address by the tenant as prescribed by this section, the owner shall not be required to provide notice under

this section or offer the tenant the right to return to occupancy.

The tenant shall notify the owner in writing that he or she will occupy the unit. The notice shall be sent by first-class certified mail no later than 10 days after the notice has been mailed by the owner.

(4) Order that failure to comply with any abatement order under this chapter shall be punishable by civil contempt, penalties under Chapter 6 (commencing with Section 17995), and any other penalties and fines as are available.

(e) The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a "proceeding" or "judgment" as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

(f) The term "owner," for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

(g) These remedies shall be in addition to those provided by any other law

(h) Nothing in this section or in Section 17980.6 shall impair the rights of an owner exercising his or her rights established pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1335

An act to amend Section 10177 of the Business and Professions Code, relating to real estate.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 10177 of the Business and Professions Code is amended to read:

10177. The commissioner may suspend or revoke the license of any real estate licensee, or may deny the issuance of a license to an applicant, who has done, or may suspend or revoke the license of, or deny the issuance of a license to, a corporate applicant if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done, any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or any salesperson, by fraud, misrepresentation or deceit, or by making any material misstatement of fact in an application for a real estate license, license renewal or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony or a crime involving moral turpitude, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in, the publication, advertisement, distribution, or circulation of any material false statement or representation concerning his or her business, or any business opportunity or any land or subdivision (as defined in Chapter 1 (commencing with Section 11000) of Part 2) offered for sale.

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term "realtor" or any trade name or insignia of membership in any real estate organization of which the licensee is not a member.

(f) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a real

estate license, or has either had a license denied or a license issued by another agency of this state, another state, or the federal government, revoked or suspended for acts which if done by a real estate licensee would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing any act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Has used his or her employment by a governmental agency in a capacity giving access to records, other than public records, in such manner as to violate the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in any order granting a restricted license.

(*l*) Solicited or induced the sale, lease, or the listing for sale or lease, of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools, due to the present or prospective entry into the neighborhood of a person or persons of another race, color, religion, ancestry, or national origin.

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated the Corporations Code or the regulations of the Commissioner of Corporations relating to securities as specified in Section 25206 of the Corporations Code.

(o) Failed to disclose to the buyer of real property in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee occupies a special relationship shall be disclosed to the buyer.

The commissioner may not deny or suspend the license of a corporate real estate broker if the offending officer, director, or stockholder has been completely disassociated from any affiliation or ownership in the corporation.

SEC. 2. It is the intent of the Legislature in enacting this act to set forth a specific ground for disciplinary action against a real estate licensee, which ground is one of many possible acts of fraudulent or dishonest activities for which a licensee may be disciplined under subdivision (i) of Section 10176 of the Business and Professions Code, and that nothing in this act shall either broaden or limit the authority of the Commissioner of Real Estate to take disciplinary action under Section 10176 of the Business and Professions Code.

CHAPTER 1336

An act to amend Section 1102.6 of the Civil Code, and to add Chapter 12.5 (commencing with Section 19890) to Part 3 of Division 13 of the Health and Safety Code, relating to automatic garage door openers.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The garage door is the largest and heaviest piece of moving equipment in most homes, and in order to avoid injury, it should be designed, manufactured, equipped, and maintained with due care. For this reason, garage door springs are currently regulated under California law.

(b) There are over 20 million automatic garage door openers in the nation today, a large portion of them in California.

(c) New residential automatic garage door openers should possess an automatic reversing safety device in compliance with current voluntary standards.

(d) There is no current California state regulation of these devices. Voluntary standards were established in 1973; however, prior to that date, there were no applicable industry safety standards requiring automatic reversing safety devices. Although automatic garage door openers have a life expectancy of approximately eight years, it is possible for individual openers to last as long as 40 years.

(e) Therefore, many automatic garage door openers currently installed do not have automatic safety reversing devices, and for many of the doors that do have these devices, the door and operator systems may not be properly adjusted and maintained. This condition is worsened by the fact that many persons are not aware

of this problem and may have a false sense of security because they possess a door which purports to have an automatic safety device, yet the door and operator system may not have been tested or properly maintained and, therefore, may not be able to protect small children living in, or visiting, the home from serious injury or death.

(f) Since 1982, nationally, at least 44 children under 14 years of age have died in accidents involving automatic garage door openers. In November of 1989, a five-year-old girl died in Sacramento in an accident involving a garage door.

(g) It is, therefore, necessary that mandatory safety standards be established with respect to residential garage door opener systems.

SEC. 2. Section 1102.6 of the Civil Code is amended to read:

1102.6. The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF_____, COUNTY OF_____, STATE OF CALIFORNIA, DESCRIBED AS_____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF_____, 19____. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:_____

_____

_____

_____

(list all substituted disclosure forms to be used in connection with this transaction)

II

SELLERS INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller __is __is not occupying the property.

A. The subject property has the items checked below (read across):

__Range	__Oven	__Microwave
__Dishwasher	__Trash Compactor	__Garbage Disposal
__Washer/Dryer Hookups	__Window Screens	__Rain Gutters
__Burglar Alarms	__Smoke Detector(s)	__Fire Alarm
__T.V. Antenna	__Satellite Dish	__Intercom
__Central Heating	__Central Air Cndtng.	__Evaporator Cooler(s)
__Wall/Window Air Cndtng.	__Sprinklers	__Public Sewer System
__Septic Tank	__Sump Pump	__Water Softener
__Patio/Decking	__Built-in Barbeque	__Gazebo
__Sauna	__Pool	__Spa __Hot Tub
__Security Gate(s)	__Automatic Garage Door Opener(s)*	__Number Remote Controls
Garage: __Attached	__Not Attached	__Carport
Pool/Spa Heater: __Gas	__Solar	__Electric
Water Heater: __Gas		__Private Utility or Other_____
Water Supply: __City	__Well	
Gas Supply: __Utility	__Bottled	

Exhaust Fan(s) in_____ 220 Volt Wiring in_____ Fireplace(s) in_____
Gas Starter_____ Roof(s): Type:_____ Age:_____(approx.)
Other:_____

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? __Yes __No. If yes, then describe.

(Attach additional sheets if necessary):_____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? __Yes __No. If yes, check appropriate space(s) below.

__Interior Walls __Ceilings __Floors __Exterior Walls __Insulation __Roof(s)
__Windows __Doors __Foundation __Slab(s) __Driveways __Sidewalks
__Walls/Fences __Electrical Systems __Plumbing/Sewers/Septics __Other Structural Components (Describe:_____)

If any of the above is checked, explain. (Attach additional sheets if necessary):_____

* This garage door opener may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of the Health and Safety Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property ..... __Yes __No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ..... __Yes __No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property..... __Yes __No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits..... __Yes __No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes..... __Yes __No
6. Landfill (compacted or otherwise) on the property or any portion thereof..... __Yes __No
7. Any settling from any cause, or slippage, sliding, or other soil problems..... __Yes __No
8. Flooding, drainage or grading problems..... __Yes __No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides..... __Yes __No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements..... __Yes __No
11. Neighborhood noise problems or other nuisances..... __Yes __No
12. CC&R's or other deed restrictions or obligations..... __Yes __No
13. Homeowners' Association which has any authority over the subject property..... __Yes __No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)..... __Yes __No
15. Any notices of abatement or citations against the property..... __Yes __No
16. Any lawsuits against the seller threatening to or affecting this real property..... __Yes __No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary): _____

_____

_____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____

Seller _____ Date _____

III

AGENTS INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

_____

_____

_____

_____

Agent (Broker Representing Seller)_____ By_____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

IV

AGENTS INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

_____

_____

_____

_____

Agent (Broker obtaining the Offer)_____ By_____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

161650

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller_____ Date_____ Buyer_____ Date_____
Seller_____ Date_____ Buyer_____ Date_____

Agent (Broker Representing Seller) _____ By_____ Date_____
(Associate Licensee or Broker-Signature)

Agent (Broker obtaining the Offer)_____ By_____ Date_____
(Associate Licensee or Broker-Signature)

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

SEC. 3. Chapter 12.5 (commencing with Section 19890) is added to Part 3 of Division 13 of the Health and Safety Code, to read:

CHAPTER 12.5. AUTOMATIC GARAGE DOOR OPENERS

19890. (a) On or after January 1, 1991, no person, corporation, or entity shall manufacture, purchase, sell or offer for sale at retail or wholesale, or install in this state, a residential automatic garage door opener for single-family or multifamily dwellings that does not have an automatic reverse safety device which complies with the applicable standards set forth in the Underwriters Laboratories Inc., Standard for Safety-ANSI/UL 325, Third Edition, as revised May 4, 1988.

(b) In addition to the requirements of subdivision (a), on or after January 1, 1993, no person, corporation, or entity shall manufacture, purchase, sell or offer for sale at retail or wholesale, or install in this state, any residential automatic garage door opener unless, in order to operate, it requires the inclusion of a tactile garage door edge sensor, an optical sensor, or a similar device that when activated is designed to cause a closing door to open and prevent an open door from closing. This device shall be designed to operate in a manner so that the interruption or misalignment of the device or an opening or short in the wires between the device and the power head would cause a closing door to open and prevent an open door from closing.

(c) (1) On or after January 1, 1991, any manufacturer selling or offering for sale residential automatic garage door openers in this state shall clearly identify on the container, and on the opener, the month, or week, and year the opener was manufactured, and its conformance with Underwriters Laboratories Inc., Standard for Safety-ANSI/UL 325, as specified in subdivision (a).

(2) On or after January 1, 1993, conformance with the requirements of subdivision (b) shall also clearly be identified on the container and on the opener.

(3) On or after January 1, 1991, no distributor, wholesaler, or retailer shall sell or offer for sale residential automatic garage door openers in this state which are not identified as required by this subdivision.

(d) On and after January 1, 1991, any manufacturer, distributor, wholesaler, or retailer, selling or offering for sale residential automatic garage door openers in this state shall include with each automatic garage door opener a set of installation, operation, maintenance, and testing instructions. On or after January 1, 1991, any person installing, servicing, or repairing a residential automatic garage door opener shall comply with those instructions.

(e) On and after January 1, 1993, any person hired to service or repair any residential automatic garage door opener shall, upon completion of the service or repair, if any, determine whether it reverses upon contact with a rigid two-inch high obstacle placed on the surface beneath the garage door. If the residential automatic

garage door opener does not pass the test, the person shall complete and conspicuously affix to the automatic garage door opener, a red certificate as follows:

WARNING!

This garage door opener, when tested on this date, did not reverse upon contact with a two-inch high rigid obstacle placed on the surface beneath the garage door, and may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of the Health and Safety Code.

Address [location of automatic garage door opener]: _____

Manufacturer [if known]: _____
Date of manufacture [if known]: _____
Serial No. [if any]: _____
Model No. [if any]: _____

[signed]_____ [date] _____
[print name]_____
[firm name and address] _____

19891. (a) In addition to any other remedies permitted by law, any violations of subdivision (a), (b), or (c) of Section 19890 shall be subject to a civil penalty of one thousand dollars ($1,000) per opener installed, manufactured, sold, or offered for sale which is not in compliance with Section 19890.

(b) In addition to any other remedies permitted by law, any violations of subdivision (d) of Section 19890 shall be subject to a civil penalty of five hundred dollars ($500) per opener installed and operational, which is not in compliance with Section 19890.

(c) In addition to any other remedies permitted by law, a seller who violates the notice requirements of Section 1102.6 of the Civil Code, relating to automatic garage door openers, shall be subject to a civil penalty of five hundred dollars ($500).

(d) Court proceedings may be initiated by the building department of the local agency with jurisdiction over enforcement of building standards, by affected consumers, or by the district attorney. Civil penalties assessed shall be payable to the local agency initiating the proceedings to enforce this chapter to offset the costs

to the agency related to court proceedings. If an affected consumer initiates the proceeding, the civil penalties shall be payable to the consumer.

SEC. 4. Section 2 of this act shall be operative on July 1, 1991.

CHAPTER 1337

An act to add Sections 23056 and 23320.5 to the Business and Professions Code, and to add Section 2426 to the Vehicle Code, relating to drivers.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 23056 is added to the Business and Professions Code, to read:

23056. The department shall send a copy of the information sheet prepared by the Department of the California Highway Patrol pursuant to Section 2426 of the Vehicle Code with the annual renewal notice to all on-sale licensees.

SEC. 2. Section 23320.5 is added to the Business and Professions Code, to read:

23320.5. (a) In addition to the annual fees provided for in Section 23320, the department shall collect a surcharge of five dollars ($5).

(b) All money collected from the surcharge shall be deposited in the Motor Vehicle Account in the State Transportation Fund, and shall be used for the Department of the California Highway Patrol's Designated Driver Program, when appropriated to the Department of the California Highway Patrol for that purpose.

SEC. 3. Section 2426 is added to the Vehicle Code, to read:

2426. The department shall prepare a one-page information sheet describing its Designated Driver Program. The sheet shall include information concerning the person or entity an alcoholic beverage licensee may contact for assistance in establishing a Designated Driver Program.

CHAPTER 1338

An act relating to highways.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990.]

The people of the State of California do enact as follows:

SECTION 1. (a) The Department of Transportation shall conduct a study of worker safety as it applies to highway construction, engineering, surveying, and maintenance workers of the department or under contract with the department. The study shall examine the safety conditions applicable to both day and night workers on highway projects and the feasibility of revising the department's current practice of closing only the highway lane adjacent to the worksite to instead closing the entire highway to vehicular travel in the vicinity of the worksite. The study shall specify what changes in the department's regulations and procedures are required in order to achieve reasonable worker safety under highway conditions and, in this regard, the department may consult with other state agencies including, but not limited to, the Division of Occupational Safety and Health of the Department of Industrial Relations.

(b) The department shall prepare and transmit to the Legislature, on or before July 1, 1991, a report of its study specifying its findings and recommendations for increasing worker safety and a schedule for the implementation of those recommendations.

CHAPTER 1339

An act to repeal Sections 14730 and 14731 of the Government Code, and to add Item 1760-301-768 to Section 2.00 of Chapter 467 of the Statutes of 1990, relating to state property, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 14730 of the Government Code is repealed.

SEC. 2. Section 14731 of the Government Code is repealed.

SEC. 3. Item 1760-301-768 is added to Section 2.00 of Chapter 467 of the Statutes of 1990, to read:

1760-301-768—For capital outlay, Department of General Services payable from the Earthquake Safety and Public Buildings Rehabilitation Bond Act of 1990 22,225,000

Schedule:

(1) 50.40.019-San Francisco State Office Building (350 McAllister Street)—renovation, expansion and seismic upgrade (base isolation technology)—preliminary plans and working drawings 6,500,000

(2) 50.40.020-San Francisco State Office Building (525 Golden Gate Avenue)—seismic retrofit, fire, life safety improvements, and renovation—preliminary plans, working drawings, and construction 14,800,000

(3) 50.40.035-Facilities study..... 925,000

Provisions:

1. The funds appropriated in category (3) will provide for an assessment of state facilities needs, environmental assessments, and site evaluation and preprogramming requirements in the San Francisco-Oakland Bay area necessitated by the Loma Prieta earthquake.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that state functions may continue uninterrupted and the safety of occupants of state buildings may be assured, it is necessary that this bill take effect immediately.

CHAPTER 1340

An act to amend Section 62000.45 of, and to add Section 62008 to, the Education Code, relating to schools.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 62000.45 of the Education Code is amended to read:

62000.45. The Instructional Materials Program shall sunset on June 30, 1996.

SEC. 2. Section 62008 is added to the Education Code, to read:

62008. The State Department of Education and the Legislative Analyst shall review and report upon the Instructional Materials Program authorized pursuant to Part 33 (commencing with Section 60000). The State Department of Education shall submit its report to the appropriate policy and fiscal committees of the Legislature on or before June 30, 1995. The Legislative Analyst shall submit his or her report to the appropriate policy and fiscal committees of the Legislature within 90 days after receiving the State Department of Education report. In conducting the review required by this section, the State Department of Education and the Legislative Analyst shall consider the issues listed in subdivisions (a) and (c) of Section 62006 and shall make recommendations on any appropriate revisions of the law or regulations governing the program.

CHAPTER 1341

An act to amend Item 4440-011-001 of Chapter 467 of the Statutes of 1990, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The Budget Act of 1990, as enacted, contains an unallocated sixty-one million dollar ($61,000,000) reduction to essential mental health services, in Item 4440-101-001.

(b) The reduction in services entailed by this funding reduction would be focused entirely on community mental health services, contrary to the policy and practice of supporting the least

institutional care consistent with individual client needs.

(c) Since the State Department of Mental Health is allocating the local program reduction on a formula which includes state hospital costs as part of each county's resource base, it is therefore appropriate to permit counties to allocate local program reductions to both state hospital and community programs.

SEC. 2. (a) Each county may, with the approval of the State Department of Mental Health, determine how its total resource base for the 1990–91 fiscal year shall be distributed between items 4440-011-001 and 4440-101-001 of the Budget Act of 1990, to serve its mentally ill population. This determination may include the redirection of resources from its state hospital bed allocation to its local program allocation. The amount of this redirection shall be computed based on a plan submitted by the county that indicates the number, type, and effective date of state hospital beds to be reduced.

(b) The cost of state hospital beds shall be an amount determined by the department, based upon such factors as the feasibility of closing or consolidating units, wards, or programs based on the county proposals submitted under subdivision (a). Statewide overhead, county match, revenues, and projected deficiency appropriations for the 1990–91 fiscal year, shall also be considered in the development of these amounts. The department shall develop these cost amounts after consultation with the California Conference of Local Mental Health Directors.

(c) Small counties with a population less than 125,000 shall not be negatively impacted with regard to state hospital access, and shall be granted the local option of inclusion or exclusion from this provision.

(d) In order to ensure an orderly process which allows for necessary adjustments in the number of beds in the state hospital system, each county choosing to adjust its current state hospital allocation shall submit a plan for purchase in, or purchase out, of beds. Counties shall enter into a contract with the department for state hospital use. Specific contracting methodologies and time frames shall be developed by the department and reviewed by the California Conference of Local Mental Health Directors.

(e) The department shall develop a range of cost amounts for state hospital beds, pursuant to subdivisions (a), (b), and (c), within 30 days after the effective date of this act, after consultation with the California Conference of Local Mental Health Directors. Final costs shall be determined by the department after it reviews all the plans submitted by counties.

(f) The department shall make information on the outcome of these provisions available to the Legislature upon request.

SEC. 3. Item 4440-011-001 of Chapter 467 of the Statutes of 1990 is amended to read:

4440-011-001—For support of the State Hospitals, Department of Mental Health 366,297,000
Schedule:
(a) 20.10—Lanterman-Petris-Short Act 226,850,000
(b) 20.20—Penal Code and Judicially Committed 139,447,000
(c) 20.30—Other State Hospital Services 45,889,000
(d) Reimbursements ..... –45,889,000
Provisions:
1. The amounts appropriated above are for support of the hospitals for the mentally ill for judicially committed patients, patients committed pursuant to the Penal Code or patients committed pursuant to the Lanterman-Petris-Short Act.
2. Upon order of the Director of Finance, the State Controller shall transfer such funds as are necessary between this item and Items 4440-101-001, 4300-003-001, 5240-001-001, and 5460-001-001.
3. Upon order of the Director of Finance, the Controller shall transfer between this item and Item 4440-016-001 those funds that are necessary for direct community services, as well as administrative and ancillary services related to the provision of direct services.
4. Upon order of the Director of Finance, the Controller shall transfer between this item and Item 4440-141-001 those funds which are necessary to support patients who may be transferred to a state hospital as the result of the decertification of the special treatment program in a skilled nursing facility funded by Item 4440-141-001.
5. Of the amount appropriated in Schedule 20.10, $105,000 is provided for payment of energy service contracts as required in connection with issuance of Public Works Board Energy Efficiency Revenue Bonds (State Pool Program), Series 1986 A.
6. Of the amount appropriated in Schedule (b), and following approval by the State Department of Mental Health, up to $571,000 is available to reimburse counties for the cost of treatment and legal services to patients in the four Department of Mental Health State Hospitals, pursuant to Section 4117 of the Welfare and

Institutions Code, provided, that expenditures made under this item shall be charged to either the fiscal year in which the claim is received or the fiscal year in which the Controller issues the warrant. Provided further, that claims filed by local jurisdictions for legal services may be scheduled by the Controller for payment.

7. Of the amount appropriated in category (a), up to $1,487,000 is available to provide state hospital resources, including the cost of 38 additional staff persons, to San Diego County as a result of the order of the court in County of San Diego, et al. v. D. Michael O'Connor, et al. This amount shall remain available until the time that the court's order is extinguished.
8. Upon order of the Director of Finance, the Controller shall transfer between this item and Item 4440-101-001 those funds necessary to permit implementation of county contracts notwithstanding Provision 3 of this item. In no event shall this provision increase the total combined allocation for Item 4440-101-001 and this item.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide counties with maximum flexibility in the adjustment of the allocation of funds for mental health purposes at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1342

An act to amend Sections 1035.2 and 1037.1 of the Evidence Code, and to amend Sections 13835.2 and 13835.10 of, and to add and repeal Section 632.2 of, the Penal Code, relating to crimes.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1035.2 of the Evidence Code is amended to read:

1035.2. As used in this article, "sexual assault victim counselor" means any of the following:

(a) A person who is engaged in any office, hospital, institution, or

center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape crisis counseling.

(2) Has 40 hours of training as described below and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas: law, medicine, societal attitudes, crisis intervention and counseling techniques, role playing, referral services, and sexuality.

(b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting sexual assault victims, and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in rape assault counseling.

(2) Has the minimum training for sexual assault counseling required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas: law, victimology, counseling techniques, client and system advocacy, and referral services.

SEC. 2. Section 1037.1 of the Evidence Code is amended to read:

1037.1. As used in this article "domestic violence counselor" means any of the following:

(a) A person who is employed by any organization providing the programs specified in Section 18294 of the Welfare and Institutions Code, whether financially compensated or not, for the purpose of rendering advice or assistance to victims of domestic violence, who has received specialized training in the counseling of domestic violence victims, and who meets one of the following requirements:

(1) Has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of domestic violence victims.

(2) Has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under paragraph (1); or is a psychotherapist, as defined in Section 1010. The training, supervised by a person qualified under paragraph (1), shall include, but need not be limited to, the following areas: history of

domestic violence, civil and criminal law as it relates to domestic violence, societal attitudes towards domestic violence, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of domestic violence victims, and referral services available to domestic violence victims.

(b) A person who is employed by any organization providing the programs specified in Section 13835.2 of the Penal Code, whether financially compensated or not, for the purpose of counseling and assisting victims of domestic violence, and who meets one of the following requirements:

(1) Is a psychotherapist as defined in Section 1010; has a master's degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in counseling victims of domestic violence.

(2) Has the minimum training for counseling victims of domestic violence required by guidelines established by the employing agency pursuant to subdivision (c) of Section 13835.10 of the Penal Code, and is supervised by an individual who qualifies as a counselor under paragraph (1). The training, supervised by a person qualified under paragraph (1), shall include, but not be limited to, the following areas: law, victimology, counseling techniques, client and system advocacy, and referral services.

SEC. 3. Section 632.2 is added to the Penal Code, to read:

632.2. (a) Any person who, without the consent of the victim, willfully obtains or, except as provided in Section 1035.4 or Section 1037.2 of the Evidence Code, knowingly discloses any privileged information obtained from a confidential communication specified in Section 1035.4 or 1037.2 of the Evidence Code, is guilty of a misdemeanor.

(b) Notwithstanding subdivision (a), sexual assault victim counselors, as defined in Section 1035.2 of the Evidence Code, domestic violence counselors, as defined in Section 1037.1 of the Evidence Code, and victim-witness counselors employed by organizations providing programs specified in Section 13835.2, may confer among themselves, as necessary, in order to receive and disclose information, including records, relevant to their assigned cases.

(c) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 4. Section 13835.2 of the Penal Code is amended to read:

13835.2. (a) Funds appropriated from the Victim-Witness Assistance Fund shall be made available through the Office of Criminal Justice Planning to any public or private nonprofit agency for the assistance of victims and witnesses which meets all of the following requirements:

(1) It provides comprehensive services to victims and witnesses of all types of crime. It is the intent of the Legislature to make funds available only to programs which do not restrict services to victims

and witnesses of a particular type of crime, and which do not restrict services to victims of crime where there is a suspect in the case.

(2) It is recognized by the board of supervisors as the major provider of comprehensive services to victims and witnesses in the county.

(3) It is selected by the board of supervisors as the agency to receive funds pursuant to this article.

(4) It assists victims of crime in the preparation, verification, and presentation of their claims to the State Board of Control for indemnification pursuant to Article 1 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

(5) It cooperates with the State Board of Control in verifying the data required by Article 1 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

(b) The Office of Criminal Justice Planning shall consider the following factors, together with any other circumstances it deems appropriate, in awarding funds to public or private nonprofit agencies designated as victim and witness assistance centers:

(1) The capability of the agency to provide comprehensive services as defined in this article.

(2) The stated goals and objectives of the center.

(3) The number of people to be served and the needs of the community.

(4) Evidence of community support.

(5) The organizational structure of the agency which will operate the center.

(6) The capability of the agency to provide confidentiality of records.

(c) The Office of Criminal Justice Planning shall conduct an evaluation of the activities and performance of the centers established pursuant to Chapter 1256 of the Statutes of 1977 to determine their ability to comply with the intent of this article, and shall report the findings thereon to the Legislature by January 1, 1985.

SEC. 5. Section 13835.10 of the Penal Code is amended to read:

13835.10. (a) The Legislature finds and declares all of the following:

(1) That the provision of quality services for victims of crime is of high priority.

(2) That existing victim service programs do not have sufficient financial resources to consistently recruit and employ fully trained personnel.

(3) That there is no consistency in the training provided to the various agencies serving victims.

(4) That comprehensive training for victim service agencies is geographically limited or unavailable.

(5) That there is currently no statewide comprehensive training system in place for the state to insure that all service providers receive adequate training to provide quality services to victims of

crime.

(6) It is the intention of the Legislature to establish a statewide training program within the Office of Criminal Justice Planning to provide comprehensive standardized training to victim service providers.

(b) The Office of Criminal Justice Planning shall establish a statewide victim-assistance training program, the purpose of which is to develop minimum training and selection standards, certify training courses, and provide funding to enable local victim service providers to acquire the required training.

(c) (1) For the purpose of raising the level of competence of local victim service providers, the office shall adopt guidelines establishing minimum standards of training for employees of victim-witness and sexual assault programs funded by the office to provide services to victims of crime. The office shall establish an advisory committee composed of recognized statewide victim service organizations, representatives of local victim service programs, and others selected at the discretion of the executive director to consult on the research and development of the training, selection, and equivalency standards.

(2) Any local unit of government, community-based organization, or any other public or private nonprofit entity funded by the office as a victim-witness or sexual assault program to provide services to victims of crime shall adhere to the training and selection standards established by the office. The standards for sexual assault victim service programs developed by the advisory committee established pursuant to Section 13836 shall be the standards for purposes of this section. With the exception of the sexual assault standards, the office shall conduct or contract with an appropriate firm or entity for research on validated standards pursuant to this section in consultation with the advisory committee established pursuant to paragraph (1). The office may defer the adoption of the selection standards until the necessary research is completed. Until the standards are adopted, affected victim service programs may receive state funding from the office upon certification of their willingness to adhere to the training standards adopted by the office.

(3) Minimum training and selection standards may include, but shall not be limited to, basic entry, continuation, supervisory, management, specialized curricula, and confidentiality.

(4) Training and selection standards shall apply to all victim service and management personnel of the victim-witness and sexual assault agencies funded by the office to provide services to victims of crime. Exemptions from this requirement may be made by the office. An agency which, despite good faith efforts, is unable to meet the standards established pursuant to this section, may apply to the office for an exemption. For the purpose of exemptions, the office may establish procedures that allow for partial adherence. The office may develop equivalency standards which recognize professional experience, education, training, or a combination of the above, for

personnel hired before July 1, 1987.

(5) Nothing in this section shall prohibit an agency, funded by the office to provide services to victims of crime, from establishing training and selection standards which exceed the minimum standards established by the office pursuant to this section.

(d) For purposes of implementing this section, the office has all of the following powers:

(1) To approve or certify, or both, training courses selected by the office.

(2) To make those inquiries which may be necessary to determine whether every local unit of government, community-based organization, or any other public or private entity receiving state aid from the office as a victim-witness or sexual assault program for the provision of services to victims of crime, is adhering to the standards for training and selection established pursuant to this section.

(3) To adopt those guidelines which are necessary to carry out the purposes of this section.

(4) To develop or present, or both, training courses for victim service providers, or to contract with coalitions, councils, or other designated entities, to develop or present, or both, those training courses.

(5) To perform other activities and studies necessary to carry out the intent of this section.

(e) In order for the Legislature to determine the need to continue or modify the standards and training programs for local victim service providers, the office shall report to the Legislature on October 1, 1990, and biannually thereafter, regarding the progress and effectiveness of the training program.

(f) (1) The office may utilize any funds that may become available from the Victim-Witness Assistance Fund to fund the cost of training staff of victim service agencies which are funded by the office from the fund. The office may utilize federal or other state funds that may become available to fund the cost of training staff of victim service agencies which are not eligible for funding from the Victim-Witness Assistance Fund.

(2) Peace officer personnel whose jurisdictions are eligible for training subvention pursuant to Chapter 1 (commencing with Section 13500) of Title 4 of this part and correctional or probation personnel whose jurisdictions are eligible for state aid pursuant to Article 2 (commencing with Section 6035) of Chapter 5 of Title 7 of Part 3 are not eligible to receive training reimbursements under this section unless the person receiving the training is assigned to provide victim services in accordance with a grant award agreement with the office and is attending training to meet the established standards.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty

for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1343

An act to add Chapter 8.5 (commencing with Section 1745) to Division 2 of, the Health and Safety Code, relating to health care.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Chapter 8.5 (commencing with Section 1745) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 8.5. CALIFORNIA HOSPICE LICENSURE ACT OF 1990

Article 1. General

1745. (a) The purposes of this chapter are to provide for the licensure of hospices by the state department in order to ensure the health and safety of patients, who by definition, are experiencing the last phases of life due to the existence of a terminal disease, and to permit qualified persons, political subdivisions of the state, and governmental agencies to comply with requirements of federal law regarding the provision of hospice care.

(b) In enacting this chapter, it is the intent of the Legislature to allow all qualified persons, political subdivisions of the state, and governmental agencies to provide hospice services to the people of California It is also the intent of the Legislature to distinguish between the functions of a volunteer hospice and a hospice requiring licensure. It is further the intent of the Legislature to require the state department to establish standards of quality care for licensed hospices.

(c) It is the intent of the Legislature that regulations adopted by the state department pursuant to this chapter not be so burdensome or costly, or both, in terms of implementation, that hospices located in rural areas are forced to stop providing care. Therefore, the state department shall exercise discretion and program flexibility in regard to licensing hospices which are located in rural areas of the state.

1746. As used in this chapter, the following definitions shall apply:

(a) "Bereavement services" means those services available to the surviving family members for a period of at least one year after the

death of the patient. These services shall include an assessment of the needs of the bereaved family, and the development of a care plan that meets these needs, both prior to, and following the death of the patient.

(b) "Hospice" means a specialized form of multidisciplinary health care which is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life due to the existence of a terminal disease, to provide supportive care to the primary care giver and the family of the hospice patient, and which meets all of the following criteria:

(1) Considers the patient and the patient's family, in addition to the patient, as the unit of care.

(2) Utilizes a multidisciplinary team to assess the physical, medical, psychological, social, and spiritual needs of the patient and the patient's family.

(3) Requires the multidisciplinary team to develop an overall plan of care and to provide coordinated care which emphasizes supportive services, such as home care, pain control, and limited inpatient services. Limited inpatient services are intended to ensure both continuity of care and appropriateness of services for those patients who cannot be managed at home because of acute complications or the temporary absence of a capable primary care giver.

(4) Provides for the palliative medical treatment of pain and other symptoms associated with a terminal disease, but does not provide for efforts to cure the disease.

(5) Provides for bereavement services following death to assist the family to cope with social and emotional needs associated with the death of the patient.

(6) Actively utilizes volunteers in the delivery of hospice services.

(7) To the extent appropriate, based on the medical needs of the patient, provides services in the patient's home or primary place of residence.

(c) "Inpatient care arrangements" means arranging for those short inpatient stays which may become necessary to manage acute symptoms or due to the temporary absence, or need for respite, of a capable primary care giver. The hospice shall arrange for these stays, ensuring both continuity of care and the appropriateness of services.

(d) "Medical direction" means those services provided by a licensed physician and surgeon who is charged with the responsibility of acting as a consultant to the multidisciplinary team, a consultant to the patient's attending physician and surgeon, as requested, with regard to pain and symptom management, and liaison with physicians and surgeons in the community.

(e) "A multidisciplinary team" means the hospice care team which includes, but is not limited to, the patient and patient's family, a physician and surgeon, a registered nurse, a social worker, a

volunteer, and a spiritual care giver. The team shall be coordinated by a registered nurse and shall be under medical direction. The team shall meet regularly to develop and maintain an appropriate plan of care.

(f) "Plan of care" means a written plan developed by the multidisciplinary team which addresses the needs of a patient and family admitted to the hospice program. The hospice shall retain overall responsibility for the development and maintenance of the plan of care and quality of services delivered.

(g) "Skilled nursing services" means those services provided under a plan of care developed by the multidisciplinary team and the patient's physician and surgeon to a patient and his or her family that pertain to the palliative, supportive services required by patients with a terminal illness. Skilled nursing services include, but are not limited to, patient assessment, evaluation and case management of the medical nursing needs of the patient, the performance of prescribed medical treatment for pain and symptom control, the provision of emotional support to both the patient and his or her family, and the instruction of care givers in providing personal care to the patient. Skilled nursing services shall provide for the continuity of services for the patient and his or her family within the home. Skilled nursing services shall be available on a 24-hour on-call basis.

(h) "Social service/counseling services" means those counseling and spiritual care services which assist the patient and his or her family to minimize stresses and problems that arise from social, economic, psychological, or spiritual needs by utilizing appropriate community resources, and maximize positive aspects and opportunities for growth.

(i) "Terminal disease" or "terminal illness" means a medical condition resulting in a prognosis of life of one year or less.

(j) "Volunteer services" means those services provided by trained hospice volunteers who have agreed to provide service under the direction of a hospice staff member who has been designated by the hospice to provide direction to hospice volunteers. Hospice volunteers may be used to provide support and companionship to the patient and his or her family during the remaining days of the patient's life and to the surviving family following the patient's death.

Article 2. Licensure

1747. (a) No person, political subdivision of the state, or other governmental agency, which is not operating a hospice as of January 1, 1991, shall establish or operate a hospice without first obtaining a license under this chapter.

(b) Any person, political subdivision of the state, or other governmental agency, which is operating a hospice as of January 1, 1991, may continue to operate the hospice only under the following

conditions:

(1) The person, political subdivision of the state, or other governmental agency shall apply to the state department for a license under this chapter within 60 days after forms for the application of licensure under this chapter are available from the state department.

(2) The person, political subdivision of the state, or other governmental agency shall cease calling or referring to itself as a hospice upon the final decision of the director upholding the state department's denial of an application for licensure under this chapter.

(c) Nothing in this chapter shall preclude the ongoing use of the title "volunteer hospice" by those organizations which satisfy all of the following:

(1) They do not provide skilled nursing services.

(2) They do not charge for services, and they do not receive third party payment for services rendered.

(3) They satisfy the disclosure requirements specified in subdivision (c) of Section 1748.

(d) A small and rural hospice is exempt from the licensing provisions of this chapter and the disclosure requirements of subdivision (c) of Section 1748. A small and rural hospice may provide skilled nursing services and may use the title "volunteer hospice." For purposes of this chapter, a "small and rural hospice" means a hospice which provides services to less than 50 patients per year, does not charge for services, does not receive third-party payment for services rendered, and which is not located in a standard metropolitan statistical area.

1748. (a) Except as otherwise provided in subdivision (b) or (d) of Section 1747, no person, political subdivision of the state, or other governmental agency shall establish, conduct, maintain, or represent itself as a hospice unless a license has been issued under this chapter.

(b) Any person, political subdivision of the state, or other governmental agency desiring a license to establish a hospice shall file with the state department a verified application on a form prescribed and furnished by the state department which contains any information as may be required by the state department for the proper administration and enforcement of this chapter.

(c) Any hospice which is not required to obtain a license under this chapter shall disclose in all advertisements and information provided to the public all of the following information:

(1) It is not required to be licensed and is not regulated by the state department.

(2) Any complaint against the hospice should be directed to the local district attorney and the state department.

(3) Any complaint against personnel licensed by a board or committee within the Department of Consumer Affairs and employed by the hospice should be directed to the respective board or committee. Any complaint against a certified home health aide or

certified nurse assistant shall be directed to the state department.

The address and phone number of any state agency, board, or committee which is responsible for addressing complaints shall be provided by the hospice, upon request, to any patient of the hospice.

1749. (a) To qualify for a license under this chapter, an applicant shall satisfy all of the following:

(1) Be of good moral character. If the applicant is a franchise, franchisee, firm, association, organization, partnership, business trust, corporation, company, political subdivision of the state, or governmental agency, the person in charge of the hospice for which the application for a license is made shall be of good moral character.

(2) Demonstrate the ability of the applicant to comply with this chapter and any rules and regulations promulgated under this chapter by the state department.

(3) File a completed application with the state department which was prescribed and furnished pursuant to Section 1748.

(b) In order for a person, political subdivision of the state, or other governmental agency to be licensed as a hospice it shall satisfy the definition of a hospice contained in Section 1746, and also provide, or make provision for, the following basic services:

(1) Skilled nursing services.

(2) Social services/counseling services.

(3) Medical direction.

(4) Bereavement services.

(5) Volunteer services.

(6) Inpatient care arrangements.

1749.5. The Legislature recognizes that hospices can apply for certification for their hospice programs from the federal Medicare program. If the department has determined during any combined licensing and certification survey that a hospice is in substantial compliance with a requirement, the department shall not be redundant by also reviewing the similar licensing or certification requirements.

1750. (a) Each application for a license under this chapter shall be accompanied by a fee in an amount established by the state department that is sufficient to cover the cost of processing the application.

(b) In addition to the fee specified in subdivision (a) above, the state department shall establish and adjust annually a biennial license fee for hospices that is sufficient to cover the costs of administering this chapter.

1751. (a) Upon an applicant's filing an application for licensure under this chapter and compliance with this chapter and the rules and regulations adopted by the state department under this chapter, the state department shall issue to the applicant a license to operate as a hospice. Any fees required pursuant to Section 1750 shall be paid before a license is issued. Licensure also may be denied by the state department as specified in Section 1755.

(b) Each license issued under this chapter shall expire 24 months

from the date of its issuance.

(c) A biennial application for the renewal of a license, accompanied by any fee required pursuant to subdivision (b) of Section 1750, shall be filed with the state department no less than 30 days prior to the expiration date of the license. The failure to file an application for renewal within the time required by this subdivision shall result in the expiration of the license.

Article 3. Enforcement

1752. (a) A licensed hospice, at the state department's option, may periodically be inspected by a duly authorized representative of the state department. Reports of each inspection shall be prepared by the representative who conducted the inspection, upon forms prepared and furnished by the state department, and filed with the state department. The inspection shall be for the purpose of ensuring that this chapter and the rules and regulations adopted under this chapter are being followed.

(b) Any officer, employee, or agent of the state department, who has been assigned the responsibility of enforcing this chapter, may enter and inspect any building or premises where hospice care is being provided, as well as any form, record, or file of a licensee at any reasonable time to assure compliance with, or to prevent the violation of, any provision of this chapter.

1753. The state department shall adopt, amend, or repeal, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, reasonable rules and regulations as may be necessary or proper to carry out the purposes and intent of this chapter and to enable the state department to exercise the powers and perform the duties conferred upon it by this chapter. The state department shall adopt any regulation needed to commence the licensing of hospices pursuant to this chapter on or before June 30, 1992. The department shall consult with hospices, small and rural hospices, and volunteer hospice providers in developing regulations pursuant to this chapter.

1754. (a) Any licensee may, with the approval of the state department, surrender his or her license for suspension or cancellation by the state department.

(b) Any license suspended or canceled pursuant to this section may be reinstated by the state department upon receipt of an application showing compliance with this chapter.

1755. (a) The state department may deny any application for licensure, or suspend or revoke any license issued, under this chapter upon any of the following grounds:

(1) Violation by the applicant or licensee of this chapter or any rules and regulations promulgated by the state department under this chapter.

(2) Any felony conviction of the applicant or licensee for the violation of any law of this state.

(3) Any conviction of the applicant or licensee for aiding, abetting, or permitting the commission of any act that is a felony in this state.

(4) The applicant's or licensee's misrepresentation of a material fact in the application for a license under this chapter.

(b) Proceedings for the denial, suspension, or revocation of licenses under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. In the case of a conflict between this chapter and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, Chapter 5 (commencing with Section 11500) shall control.

1756. (a) The suspension, expiration, or forfeiture by operation of law of a license issued by the state department under this chapter, the suspension or cancellation of a license by order of the state department or by order of a court of law, or the surrender of a license without the written consent of the state department shall not deprive the state department of its authority to institute or continue any disciplinary proceeding against the licensee pursuant to this chapter.

(b) Any license revoked pursuant to this chapter may be reinstated pursuant to Section 11522 of the Government Code.

1757. Any person who violates any provision of this chapter or any rule or regulation promulgated under this chapter is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars ($500), by imprisonment in the county jail for a period not to exceed 180 days, or by both the fine and imprisonment.

1758. The director may bring an action to enjoin the violation or threatened violation of Section 1748 in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show the lack of an adequate remedy at law or to allege facts necessary to show or tending to show irreparable damage or loss.

1759. The district attorney of every county shall, upon application by the state department or its authorized representative, institute and conduct the prosecution within his or her county of any action for violation of this chapter.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act

contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution

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CHAPTER 1344

An act to amend Sections 13827, 13827.1, 13827.3, 13827.4, 13827.6, and 13827.7 of, and to repeal Section 13827.5 of, the Penal Code, and to amend Section 2 of Chapter 637 of the Statutes of 1985, relating to juvenile sex offenders, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990]

I am deleting the $500,000 appropriation contained in Section 9 of Senate Bill No. 1895

This bill would extend the operation of the Juvenile Sex Offender Treatment Pilot Program in the Office of Criminal Justice Planning (OCJP) to July 1, 1992, and would appropriate $500,000 from the General Fund to OCJP for operation of the program in 1990–91

The demands placed on budget resources require all of us to set priorities With legislation I will be signing and the budget enacted in July 1990, more than $54 billion in state funds will be appropriated this fiscal year. This amount is more than adequate to provide the necessary essential services provided for by State Government It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1991–92. Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects. The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit

With this deletion, I approve Senate Bill No. 1895.

GEORGE DEUKMEJIAN, Governor

The people of the State of California do enact as follows:

SECTION 1. Section 13827 of the Penal Code is amended to read:

13827. This chapter shall be known and may be cited as the Juvenile Sex Offender Treatment Act.

SEC. 2. Section 13827.1 of the Penal Code is amended to read:

13827.1. From any funds appropriated therefor, the Office of Criminal Justice Planning shall establish a program to provide financial and technical assistance to county designated treatment programs for juvenile sex offenders declared to be wards of the juvenile court pursuant to Section 602 of the Welfare and Institutions

Code, but who are not committed to the Department of the Youth Authority. The eligible counties shall be selected from among those counties submitting applications to the office requesting to be selected to participate in the program, based on a determination that the counties would be capable of establishing such a program. Capability may be demonstrated by current county efforts to provide treatment programs to juvenile sex offenders.

The programs shall terminate on July 1, 1992.

SEC. 3. Section 13827.3 of the Penal Code is amended to read:

13827.3. Notwithstanding any other provision of law, in a county in which a program is established, on and after the date of the establishment of that program, any person who is adjudged to be a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code on the basis of the violation of Section 261, 264.1, 266, 285, 286, 288, 288a, or 289, and who is not committed to the Department of the Youth Authority, shall be ordered to participate in the treatment services provided by the program.

SEC. 4. Section 13827.4 of the Penal Code is amended to read:

13827.4. The county agency providing mental health services in a county participating in the program shall assign a counselor to any person described in Section 13827.3. Any counselor so assigned shall be qualified to treat juvenile sex offenders, as determined by the county in conjunction with the Office of Criminal Justice Planning.

SEC. 5. Section 13827.5 of the Penal Code is repealed.

SEC. 6. Section 13827.6 of the Penal Code is amended to read:

13827.6. On or before January 1, 1991, the Office of Criminal Justice Planning shall submit a written report to the Legislature containing all of the following information.

(a) The number of juveniles that participated in the program.

(b) The costs of the programs.

(c) The nature of the treatment provided to participants in the programs.

(d) The results of the treatment provided to participants in the programs, including data concerning recidivism by participants and any other nonsexually-related criminal offenses committed by participants.

(e) The results of combining intrafamily and pedophile treatment.

SEC. 7. Section 13827.7 of the Penal Code is amended to read:

13827.7. Counties selected to participate in the program shall utilize any funds available from public and private sources for the purposes of the program and existing treatment services prior to utilizing state funds allocated for the purposes of the program.

SEC. 8. Section 2 of Chapter 637 of the Statutes of 1985 is amended to read:

Sec. 2. This act shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1993, deletes or extends that date.

SEC. 9. The sum of five hundred thousand dollars ($500,000) is

hereby appropriated from the General Fund to the Office of Criminal Justice Planning for expenditure during the 1990–91 fiscal year for the purposes of this act. No more than 10 percent of that amount may be expended for administrative purposes.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that programs established pursuant to the Juvenile Sex Offender Treatment Act of 1985 that are to become inoperative on July 1, 1990, may continue in operation without interruption, it is necessary that this bill take effect immediately.

CHAPTER 1345

An act to amend Section 312 of the Health and Safety Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

I am deleting the $1,000,000 appropriation contained in Section 3 of Senate Bill No 2038

This bill would appropriate $1 million from the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund (Proposition 99) for the purpose of providing tobacco use screening and education and smoking cessation counseling and referrals to participants in the California Special Supplemental Food Program for Women, Infants and Children

Expenditures of Proposition 99 funds have already been determined through two previous bills, Assembly Bill 75 and Assembly Bill 1154, which contain a June 30, 1991 sunset clause Sufficient funds may not be available to fund the appropriation contained in this bill It would be more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1991–92 Only at that time can the relative merits of this program be reviewed in comparison to all other Proposition 99 funding projects The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit

With this deletion, I approve Senate Bill No. 2038

GEORGE DEUKMEJIAN, Governor

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The California Special Supplemental Food Program for Women, Infants, and Children (WIC), contained in Article 3.3 (commencing with Section 310) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, is one of the most effective preventive measures against infant mortality and life disabilities caused by low birth weight.

(2) By providing comprehensive and early prenatal care, of which WIC is an integral part, currently high hospitalization costs to the state are lessened considerably.

(3) The WIC program not only provides at-risk clients with nutritious food and referrals to health care, but also with individual and group health and nutrition counseling and education, including screening and information on smoking cessation, in order to prevent negative health consequences, including, but not limited to, low-birth weight, intrauterine growth retardation, serious pregnancy complications, and increased cancer risk, which result from smoking

(4) Due to limited federal funding, and despite recently contracted for infant formula rebate revenues, the California WIC program is only able to serve 37 percent of the eligible population, leaving approximately 700,000 women, infants, and children unserved. California ranks 10th from the bottom of all states in terms of the percentage of eligible persons served by WIC.

(5) As of December 1989, 19 other states had appropriated funds, ranging from eighty-five thousand dollars ($85,000) to twenty million one hundred thousand dollars ($20,100,000), to supplement their federal WIC allocations, for provision of food, or for nutrition services and program administration, or as contingency funds, which enables state agencies to maximize the federal allocation.

(b) It is the intent of the Legislature to do all of the following:

(1) Ensure that the State Department of Health Services spends the full amount of the tobacco tax revenues available, especially for existing programs which serve large numbers of high-risk pregnant women, and clearly provide opportunities for direct client screening education and counseling regarding smoking cessation.

(2) Ensure that more needy pregnant women, infants, and children have prompt access to perinatal and child health care services, including WIC.

(3) Encourage the State Department of Health Services to continue spending the full federal allocation for WIC food and nutrition services and program administration.

SEC. 2. Section 312 of the Health and Safety Code is amended to read:

312. The department, under any program established pursuant to this article, shall do all of the following:

(a) Establish guidelines to determine resource allocation giving consideration to an area's nutritional need.

(b) Designate the counties within which a program will be conducted, with the approval of those counties.

(c) Establish the minimum nutritional requirements for recipients.

(d) Designate specific supplemental foods to meet the minimum nutritional requirements for recipients.

(e) Develop and maintain a system for the delivery of supplemental foods to recipients through the distribution of supplemental foods designated in subdivision (d) and nutrition coupons when other methods of delivery are impractical.

(f) (1) Develop and coordinate a smoking cessation component

of program operations, with consideration of local agency plans, needs, and available tobacco education resources.

(2) In consultation with the directors of local agencies and with other individuals with expertise in the field of smoking cessation, identify and promulgate a strategy for smoking cessation in the state plan of operation and administration of the WIC program, including, but not limited to all of the following:

(A) Designating an agency staff member to coordinate smoking cessation efforts.

(B) Providing training on smoking cessation and tobacco education to designated staff members of local agencies who are responsible for counseling participants in the program.

(3) Develop and implement procedures to ensure that tobacco use screening and education, including, but not limited to, smoking cessation counseling and referrals where appropriate, are offered to all participants.

(g) (1) Establish guidelines and criteria to be used by participating local agencies, when determining recipient eligibility, which require, in addition to a recipient being a low-income pregnant woman, or a low-income postpartum and lactating woman, or a low-income infant or child under five years of age, that the recipient be at nutritional risk.

(2) A health professional on the staff of the local agency shall determine if a person is at nutritional risk through a medical or nutritional assessment. This determination may be based on referral data submitted by a health professional not on the staff of the local agency. The person's height or length and weight shall be measured, and hematological test for anemia, such as a hemoglobin or hematocrit test shall be performed. However, the tests shall not be required for infants under six months of age. In addition, the blood test shall not be required for children who were determined to be within the normal range at their last program certification. However, the blood test shall be performed on the children at least once a year. A breastfeeding woman may be certified if the child she is breastfeeding is determined to be at nutritional risk and the woman meets the income eligibility criteria.

(h) Operate the program as an adjunct to existing health services.

(i) Seek federal funds to carry out the provisions of this article.

SEC. 3. The sum of one million dollars ($1,000,000) is hereby appropriated from the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund to the State Department of Health Services, without regard to fiscal year, for the purpose of providing tobacco use screening and education, and smoking cessation counseling and referrals to participants in the California Special Supplemental Food Program for Women, Infants, and Children (WIC), pursuant to Article 3.3 (commencing with Section 310) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the

meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to express the intent of the Legislature that the full amount of tobacco tax revenues be spent in a timely and meaningful fashion, and that every possible strategy be pursued at the earliest possible time in order to prevent any further termination of participants from the California Special Supplemental Food Program for Women, Infants, and Children, it is necessary that this act take effect immediately.

CHAPTER 1346

An act to add and repeal Article 12 (commencing with Section 32420) of Chapter 3 of Part 19 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

I am deleting the $145,000 appropriation contained in Section 3 of Senate Bill No 2147

This bill would authorize any school that maintains any of grades 9 to 12, inclusive, to apply to the Superintendent of Public Schools (SPI) to establish a pilot project in community service in its schools The SPI would be required to select 10 schools This bill would also appropriate $145,000 for these pilots

The demands placed on budget resources require all of us to set priorities. With legislation I will be signing and the budget enacted in July 1990, more than $54 billion in state funds will be appropriated this fiscal year This amount is more than adequate to provide the necessary essential services provided for by State Government It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1991–92 Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit

With this deletion, I approve Senate Bill No 2147

GEORGE DEUKMEJIAN, Governor

The people of the State of California do enact as follows:

SECTION 1. Article 12 (commencing with Section 32420) is added to Chapter 3 of Part 19 of the Education Code, to read:

Article 12. Community Service Pilot Projects

32420. Any school district that maintains any of grades 9 to 12, inclusive, may apply to the Superintendent of Public Instruction to establish a pilot project in community service in its schools.

32421. (a) From applicant districts, the Superintendent of Public Instruction shall select 10 schools to establish pilot projects in community service. The 10 schools shall reflect the geographic and ethnic diversity of the state.

(b) In reviewing applications for community service pilot projects, the Superintendent of Public Instruction shall give priority to proposals that include one or more of the following:

(1) Procedures for the supervision of pupils participating in the project.

(2) Provisions for adequate orientation and training to prepare pupils to assume an active role in the community service activity that he or she undertakes.

(3) Strategies for linking community service projects with the overall program of the school.

(4) Effective strategies to inform the public about community service activities and to recognize and commend outstanding pupil participation.

(5) Integration of the project into the overall school program in a way that results in little or no additional cost to the district.

32422. Each selected school shall establish a pilot project that meets all of the following objectives:

(a) Involves all the pupils at the school.

(b) Requires pupils to find and describe their own community service activities.

(c) Requires minimum hours of service for each pupil, to be not less than 30 hours in two years.

(d) Is administered with the minimum supervision necessary to ensure the pupils' health and safety.

(e) Provides guidelines for the selection of community service activities by the pupils.

(f) Provides guidelines to approve the placement of participating pupils and to award course credit to participating pupils.

32423. The community service activities shall not include partisan or nonpartisan political activities or activities related to elections at any level of government.

32424. Each pilot project shall:

(a) Authorize pupils to receive course credit for the community service activities in which they participate.

(b) Be required, in addition to those requirements specified under Section 51225.3, for graduation by a pupil from a high school which maintains a project pursuant to this article.

(c) Provide alternative methods to complete the community service requirement, including appropriate accommodations for pupils with special needs.

32425. This article shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 2. The Superintendent of Public Instruction shall submit a report to the Legislature no later than October 1, 1994, evaluating the success of the pilot project. The contents of the report shall include, but not be limited to, the number of pupils participating in the project, the average number of hours of community service performed per pupil, the types of community service projects in

which the pupils participated, the number of course credits earned through community service and the subjects in which they were granted, the number of pupils graduating with course credits earned through the project, and the costs to school districts of administering the pilot projects.

The Superintendent of Public Instruction shall deem the pilot project a success for purposes of determining whether to continue or expand the program if, in 5 out of 10 participating schools, (a) all pupils graduating in the third year of the pilot program have earned credits related to completion of the community service requirement, and (b) the school shows no decline in graduation rates that can be linked to the community service requirement.

SEC. 3. The sum of one hundred forty-five thousand dollars ($145,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to districts whose school or schools establish a pilot project pursuant to Article 12 (commencing with Section 32420) of Chapter 3 of Part 19 of the Education Code, and for administration and evaluation of those projects.

CHAPTER 1347

An act to amend Sections 17052.6 and 23617.5 of, and to add and repeal Section 17052.20 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For taxable years beginning on or after January 1, 1991, and before January 1, 1993, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount determined in accordance with Section 21 of the Internal Revenue Code, except that the amount of the credit shall be a percentage, as provided in subdivision (b), of the allowable federal credit regardless of whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

If the adjusted gross income is:	The percentage of credit is:
$40,000 or less	30%
Over $40,000 but not over $70,000	25%
Over $70,000 but not over $100,000	20%
Over $100,000	15%

(c) This section shall remain in effect only until December 1, 1993, and as of that date is repealed.

SEC. 2. Section 17052.20 is added to the Revenue and Taxation Code, to read:

17052.20. (a) For taxable years beginning on or after January 1, 1991, and before January 1, 1994, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to one thousand dollars ($1,000) for a qualified parent.

(b) No credit shall be allowed under this section unless the qualified parent meets both of the following requirements:

(1) The qualified parent must:

(A) Qualify as a head of household under Section 2(b) and (c) of the Internal Revenue Code; or

(B) Qualify as a surviving spouse under Section 2(a) of the Internal Revenue Code; or

(C) Be considered married for tax purposes at the end of the taxable year, and file a joint return with his or her spouse for the taxable year.

(2) The qualified parent attaches a copy of the birth certificate of the child who meets the requirements of paragraph (1) of subdivision (d) to the return for each taxable year in which the credit allowed by subdivision (a) or the excess carryover allowed by subdivision (g) is claimed.

(c) The credit amount allowed in subdivision (a) shall be reduced by two hundred dollars ($200) for each one thousand dollars ($1,000), or fraction thereof, by which the qualified parent's adjusted gross income for the taxable year exceeds the following amounts:

(1) Forty thousand dollars ($40,000), if the qualified parent is a married person filing a joint return with his or her spouse, or if the qualifed parent is a surviving spouse as defined by Section 2(a) of the Internal Revenue Code.

(2) Twenty-eight thousand five hundred dollars ($28,500), if the qualified parent is a head of household as defined under Section 2(b) of the Internal Revenue Code

(d) For purposes of this section, "qualified parent" means an individual who meets all of the following requirements, as determined on a month by month basis:

(1) The qualified parent maintains as his or her home, or if married, the qualified parent and his or her spouse maintain as their home, a household which includes at least one member who is a

child, who has not reached the age of 13 months and who is a dependent (within the meaning of Section 152 of the Internal Revenue Code) of the qualified parent.

(2) The qualified parent has no earned income.

(3) The qualified parent is a resident of this state.

(4) The qualified parent or the qualified parent's spouse does not have expenses for which the credit under Section 17052.6 is claimed.

(e) A qualified parent may claim one twelfth of the credit amount provided in subdivision (a) for each whole month that all of the eligibility requirements set forth in subdivision (d) are met.

(f) A qualified parent may claim one-twelfth of the credit for the month in which the child is born, if for each remaining day of the month after the child's birth date all of the eligibility requirements set forth in subdivision (d) are met.

(g) In the case where the credit allowed by this section exceeds the tax, the excess may be carried over to reduce the tax in the following year, and succeeding years if necessary, until the credit has been exhausted. However, if the qualified parent elects to claim the credit allowed under Section 17052.6 in the following year, or any succeeding year, then no further excess carryover of the credit allowed under this section may be claimed.

(h) For each taxable year beginning on or after January 1, 1992, the Franchise Tax Board shall recompute the adjusted gross income amounts prescribed in subdivision (c). The computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index as modified for rental equivalent homeownership for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall compute an inflation adjustment factor by adding 100 percent to the percentage change figure which is furnished to them pursuant to paragraph (1), and dividing the result by 100.

(3) The Franchise Tax Board shall multiply the adjusted gross income amounts for the immediately preceding taxable year by the inflation adjustment factor determined in paragraph (2), and round off the resulting products to the nearest dollar.

(i) This section shall remain in effect only until December 1, 1994, and as of that date is repealed, unless a later enacted statute which is enacted before December 1, 1994, deletes or extends that date

SEC. 3. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For income years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be

50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any income year shall not exceed six hundred dollars ($600) for contributions to a full-time qualified care plan or a part-time qualified care plan made on behalf of the employee's dependent.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code which is a specialized center with respect to short-term illnesses of an employee's dependents, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Specialized center" means a facility which provides care to mildly ill children and which may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross infection.

(3) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(5) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(6) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the

ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the income year for which the credit is allowed.

(k) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to its respective share of the costs paid or incurred.

(*l*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (f) until the credit has been exhausted.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1348

An act to amend Sections 17034, 17043, 17053.1, 17054.5, 17073.5, 17145, 17252.5, 17265, 17552, 17854, 18515.3, 18544, 18689, 18698, 18861, 18862, 18863, 19254, 19283, 19285, 19285.5, 19419, 23058, 23151, 23153, 23801, 24634, 25901c, 26423, 26453, 26453.2, and 26453.5 of, to amend and renumber Sections 19411.1, 19415, 19416, 19417, and 19418 of, add Sections 17047, 24693, and 24990.7 to, to add Article 8 (commencing with Section 26350) to Chapter 23 of Part 11 of, and to repeal Section 17570 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 17034 of the Revenue and Taxation Code is amended to read:

17034. Unless otherwise specifically provided therein, the provisions of any act:

(a) Which affect the imposition or computation of taxes, additions to tax other than Section 18682, penalties, or the allowance of credits against the tax, shall be applied to taxable years beginning on or after January 1 of the year in which the act becomes law.

(b) Which change the provisions of Section 18682 (relating to underpayment of estimated tax) shall be applied to taxable years beginning on or after January 1 of the year immediately after the year in which the act becomes law.

(c) Which otherwise affect the provisions of this part shall be applied on and after the date the act becomes law.

SEC. 2. Section 17043 of the Revenue and Taxation Code is amended to read:

17043. (a) In filing returns as provided in Article 1 (commencing with Section 18401) of Chapter 17, an individual is required to use the same filing status as that used on his or her federal income tax return for the same taxable year, except as provided in subdivisions (b), (c), and (d).

(b) In the case of a husband and wife who file a joint federal income tax return, if one spouse was a resident of this state for all of the taxable year and the other spouse was a nonresident for all or any portion of the taxable year, a joint nonresident income tax return is required to be filed.

(c) In the case of a husband and wife who file a joint federal income tax return, this section shall not apply to either of the following:

(1) A married couple, when either spouse was an active member of the armed forces or any auxiliary branch thereof during the taxable year.

(2) A married couple, when either spouse was a nonresident of this state for the entire taxable year and had no income from a California source during the taxable year.

(d) In the case of a married couple described in subdivision (c), that couple may either file separate returns or a single joint return on the forms and in the manner as the Franchise Tax Board may prescribe.

SEC. 3. Section 17047 is added to the Revenue and Taxation Code, to read:

17047. (a) (1) Section 1398 of the Internal Revenue Code, relating to rules relating to individuals' Title 11 cases, shall apply, except as otherwise provided.

(2) Section 1398(c)(2) of the Internal Revenue Code is modified to refer to the tax determined under subdivision (a) of Section 17041, in lieu of Section 1(d) of the Internal Revenue Code.

(3) Section 1398(h)(2) of the Internal Revenue Code, relating to carryback and carryover of excess administrative costs, etc., to estate taxable years, is modified to deny a carryback to any preceding taxable year and to permit a carryover to each of the seven succeeding taxable years.

(b) Section 1399 of the Internal Revenue Code, relating to no separate taxable entities for partnerships, corporations, etc., shall apply.

SEC. 4. Section 17053.1 of the Revenue and Taxation Code, as amended by Chapter 452 of the Statutes of 1990, is amended to read:

17053.1. (a) For taxable years beginning on or after January 1, 1989, and before January 1, 1996, there shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to the amount determined in subdivision (b).

(b) An employee in a non-employer-sponsored vanpool program shall be allowed a credit in an amount equal to 40 percent of all vanpool subscription costs, for which receipts are available. In the case of a husband and wife, each shall be allowed a credit equal to 40 percent of their individual vanpool subscription costs. The credit allowed by this subdivision shall not exceed four hundred eighty dollars ($480), applied separately to a husband and wife.

(c) For purposes of this section:

(1) "Employer" means any individual for whom or entity for which services are performed by employees.

(2) "Employee" means an individual who performs service for an employer for at least 10 hours per week for remuneration, and who vanpools to and from work at least three days a week or 15 days per month for at least six months of the year.

(3) "Non-employer-sponsored vanpool program" means a program under which vehicles and related equipment and services are made available for use by employers and employees for purposes of commuting to and from work and which is administered and operated by an individual or organization, including a governmental agency, for the commuting purposes of other employers and employees who are not employees of that individual or organization.

(4) "Vanpool" means a vehicle with a seating arrangement designed to carry 7 to 15 adults, including the driver, and in which an average of seven or more persons commute on a daily basis to and from work.

(5) "Vanpool subscription costs" includes, but is not limited to, vehicle lease payments, repairs, maintenance, fuel, and insurance.

(6) An employee, within the meaning of paragraph (2), whose employer is not subject to tax under this part or under Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) of Part 11 shall be deemed to be an employee in a non-employer-sponsored vanpool program.

(d) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been used.

(e) In the case of a husband and wife who file separate returns where both qualify for the credit, each shall claim his or her allowable credit, or, if only one is qualified, the credit may be taken by either or equally divided between them.

(f) This section shall remain in effect only until December 1, 1996, and as of that date is repealed.

SEC. 5. Section 17054.5 of the Revenue and Taxation Code is amended to read:

17054.5. (a) (1) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) of a qualified individual an amount equal to 30 percent of the net tax.

(2) For taxable years beginning on or after January 1, 1987, and before January 1, 1988, a qualified individual means a qualified joint custody head of household as defined in subdivision (c).

(3) For taxable years beginning on or after January 1, 1988, a qualified individual means either of the following:

(A) A "qualified joint custody head of household" as defined in subdivision (c).

(B) A "qualified taxpayer" as defined in subdivision (e).

(4) The amount of the credit under this section shall not exceed two hundred dollars ($200) for any taxable year.

(b) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the maximum credit prescribed in subdivision (a). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index as modified for rental equivalent homeownership for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure which is furnished to them pursuant to paragraph (1) and divide the result by 100.

(3) The Franchise Tax Board shall multiply the immediately preceding taxable year credit by the inflation adjustment factor determined in paragraph (2), and round off the resulting product to the nearest one dollar ($1).

(c) "Qualified joint custody head of household" means an individual who meets all of the following:

(1) Is not married at the close of the taxable year, or files a separate return and does not have his or her spouse as a member of his or her household during the entire taxable year.

(2) Maintains as his or her home a household which constitutes for the taxable year the principal place of abode for a qualifying child,

as defined in subdivision (d), for no less than 146 days of the taxable year but no more than 219 days of the taxable year, under a decree of dissolution or separate maintenance, or under a written agreement between the parents prior to the issuance of a decree of dissolution or separate maintenance where the proceedings have been initiated.

(3) Furnishes over one-half the cost of maintaining the household during the taxable year.

(4) Does not qualify as a head of household under Section 17042 or as a surviving spouse under Section 17046.

(d) For purposes of this section, a "qualifying child" means a son, stepson, daughter, or stepdaughter of the taxpayer or a descendant of a son or daughter of the taxpayer, but if that son, stepson, daughter, stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the taxpayer is entitled to a credit for the taxable year for that person under Section 17054.

(e) "Qualified taxpayer" means an individual who meets all of the following:

(1) Is married and files a separate return.

(2) During the last six months of the taxable year the taxpayer's spouse was not a member of the taxpayer's household.

(3) Maintains a household, whether or not the taxpayer's home, which constitutes the principal place of abode of a dependent mother or father of the taxpayer for the taxable year.

(4) Furnishes over one-half of the cost of maintaining the household during the taxable year.

(5) Does not qualify as a head of household under Section 17042 or as a surviving spouse under Section 17046.

SEC. 6. Section 17073.5 of the Revenue and Taxation Code is amended to read:

17073.5. (a) A taxpayer may elect to take a standard deduction as follows:

(1) In the case of a taxpayer, other than a head of a household or a surviving spouse (as defined in Section 17046) or a married couple filing a joint return, the standard deduction shall be one thousand eight hundred eighty dollars ($1,880).

(2) In the case of a head of household or a surviving spouse (as defined in Section 17046) or a married couple filing a joint return, the standard deduction shall be three thousand seven hundred sixty dollars ($3,760).

(b) The standard deduction provided for in subdivision (a) shall be in lieu of all deductions other than those which are to be subtracted from gross income in computing adjusted gross income under Section 17072.

(c) (1) The provisions of this section shall be applied in lieu of the provisions of Sections 63(c), 63(f), and 63(h) of the Internal Revenue Code, relating to standard deductions.

(2) Notwithstanding paragraph (1), Section 63(c)(5) of the Internal Revenue Code, relating to limitations on the standard

deduction of certain dependents, and Section 63(c)(6) of the Internal Revenue Code, relating to certain individuals not eligible for the standard deduction, shall apply. For purposes of this paragraph, the amount specified in Section 63(c)(5)(A) of the Internal Revenue Code shall be adjusted for inflation in accordance with the provisions of Section 63(c)(4) of the Internal Revenue Code.

(d) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the standard deduction amounts prescribed in subdivision (a). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall compute an inflation adjustment factor by adding 100 percent to that portion of the percentage change figure which is furnished pursuant to paragraph (1) and dividing the result by 100.

(3) The Franchise Tax Board shall multiply the standard deduction amounts in the preceding taxable year by the inflation adjustment factor determined in paragraph (2), and round off the resulting products to the nearest one dollar ($1).

SEC. 7. Section 17145 of the Revenue and Taxation Code, as amended by Chapter 119 of the Statutes of 1990, is amended to read:

17145. (a) A management company, or series thereof, is qualified to pay exempt-interest dividends to its shareholders if, at the close of each quarter of its taxable year, at least 50 percent of the value of its total assets consists of obligations which, when held by an individual, the interest therefrom is exempt from taxation by this state under the Constitution or laws of this state or of the United States.

(b) For purposes of this section—

(1) "Exempt-interest dividend" means any dividend or part thereof paid by a management company or series thereof in an amount not exceeding the interest received by it during its taxable year on obligations which, when held by an individual, the interest therefrom is exempt from taxation by this state under the Constitution or laws of this state or the United States, and designated by it as an exempt-interest dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including exempt-interest dividends paid after the close of the taxable year as described in Section 855 of the Internal Revenue Code) is greater than the excess of ——

(i) The amount of interest received by it during its taxable year on obligations, interest on which, if held by an individual, is exempt from taxation by this state under the Constitution or laws of this state,

and on obligations of the United States which pay interest excludable from income under the Constitution or laws of the United States, over

(ii) The amounts that, if it were treated as an individual, would be disallowed as deductions under Section 17280 of this part or Section 171(a)(2) of the Internal Revenue Code, the portion of that distribution which shall constitute an exempt-interest dividend shall be only that proportion of the amount so designated as the amount of that excess for that taxable year bears to the amount so designated.

(2) "Management company" means a corporation or business trust or other organization which meets the requirements of Section 24412.

(3) "Series" means a segregated portfolio of assets, the beneficial interest in which is owned by the holders of a class or series of stock of the management company that is exclusive of all other classes or series with respect to that portfolio of assets.

(4) "Value" means, with respect to securities (other than those of majority-owned subsidiaries) for which market quotations are readily available, the market value of those securities, and with respect to other securities and assets, fair market value as determined in good faith by the board of directors or trustees, except that in the case of securities of majority-owned subsidiaries which are investment companies, as defined in the Investment Company Act of 1940, that fair value shall not exceed market value or asset value, whichever is higher.

(c) An exempt-interest dividend shall be treated by recipients thereof as an item of interest excludable from income.

SEC. 8. Section 17252.5 of the Revenue and Taxation Code is amended to read:

17252.5. (a) A taxpayer may elect to treat the cost of any Section 17252.5 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which Section 17252.5 property is placed in service.

(b) In the case of a husband or wife filing separate returns for a taxable year in which a spouse is entitled to the deduction under subdivision (a), the applicable amount shall be equal to 50 percent of the amount otherwise determined under subdivision (a).

(c) (1) An election under this section for any taxable year shall—

(A) Specify the items of Section 17252.5 property to which the election applies and the portion of the cost of each of those items which is to be taken into account under subdivision (a), and

(B) Be made on the taxpayer's return of the tax imposed by this part for the taxable year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17252.5 property" means any recovery property which is Section 38 property under the terms of the Internal Revenue Code and which is acquired by

purchase for exclusive use in a trade or business conducted within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying subsections (b) and (c) of Section 267 of the Internal Revenue Code for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants),

(B) The basis of the property in the hands of the person acquiring it is not determined—

(i) In whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) Under Section 1014 of the Internal Revenue Code, relating to basis of property acquired from a decedent.

(3) For purposes of this section, the cost of property does not include so much of the basis of the property as is determined by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any Section 17252.5 property purchased by any person described in Section 46(e)(3) of the Internal Revenue Code unless the credit under Section 38 of the Internal Revenue Code is allowable with respect to that person for that property (determined without regard to this section).

(6) In the case of a partnership, the dollar limitation contained in subdivision (f) shall apply with respect to the partnership and with respect to each partner.

(e) For purposes of this section, "taxpayer" means a taxpayer who conducts a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(f) The deduction allowable under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of an enterprise zone and taxable years thereafter:

	The applicable amount is:
Taxable year of designation	$ 5,000
1st taxable year thereafter	5,000
2nd taxable year thereafter	7,500
3rd taxable year thereafter	7,500
Each taxable year thereafter	10,000

(g) This section shall apply only to property which is used

exclusively in a trade or business conducted within an enterprise zone.

(h) Any amounts deducted under subdivision (a) with respect to property which ceases to be used in the trade or business within an enterprise zone at any time before the close of the second taxable year after the property was placed in service shall be included in income for that year.

(i) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets.

SEC. 9. Section 17265 of the Revenue and Taxation Code is amended to read:

17265. (a) A taxpayer may elect to treat 40 percent of the cost of any Section 17265 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the Section 17265 property is placed in service.

(b) In the case of a husband and wife filing separate returns for a taxable year, the applicable amount under subdivision (a) shall be equal to 50 percent of the percentage specified in subdivision (a).

(c) (1) An election under this section for any taxable year shall—

(A) Specify the items of Section 17265 property to which the election applies and the percentage of the cost of each of those items which is to be taken into account under subdivision (a).

(B) Be made on the taxpayer's return of the tax imposed by this part for the taxable year.

This election shall be made in the time, form, and manner which the Franchise Tax Board may prescribe.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17265 property" means property acquired by the taxpayer which is used exclusively within a program area (as defined in Section 7082 of the Government Code) and consists of machinery and machinery parts used for fabricating, processing, assembling, and manufacturing and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms.

"Section 17265 property" also means property used as an integral part of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or Section 707(b) of the Internal Revenue Code (but, in applying Sections 267(b) and 267(c)

for purposes of this section, Section 267(c)(4) shall be treated as providing that the family of an individual shall include only the individual's spouse, ancestors, and lineal descendants),

(B) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom it is acquired.

(3) For purposes of this section, the cost of property does not include so much of the basis of the property as is determined by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any Section 17265 property purchased by any person described in Section 46(e)(3) of the Internal Revenue Code unless the credit under Section 38 of the Internal Revenue Code is allowable with respect to that person for that property (determined without regard to this section).

(6) In the case of a partnership, the percentage limitation specified in subdivision (a) shall apply with respect to the partnership and with respect to each partner.

(e) For purposes of this section, "taxpayer" means a taxpayer who conducts a qualified business within a program area (as defined in Section 7082 of the Government Code).

(f) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property, the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets, and shall reduce the basis of the property by the amount of the deduction claimed under this section. However, the taxpayer may claim depreciation by any method permitted by Section 17250, commencing with the taxable year following the taxable year in which the Section 17265 property is placed in service.

(g) The aggregate cost which may be taken into account under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of a program area and taxable years thereafter:

	The applicable amount is:
Taxable year of designation	$100,000
1st taxable year thereafter	100,000
2nd taxable year thereafter	75,000
3rd taxable year thereafter	75,000
Each taxable year thereafter	50,000

(h) Any amounts deducted under subdivision (a) with respect to property which ceases to be qualified property at any time before the close of the second taxable year after the property is placed in service shall be included in income for that year.

SEC. 10. Section 17552 of the Revenue and Taxation Code is amended to read:

17552. (a) Notwithstanding Section 17565, a return for a period of less than 12 months shall also be made when the Franchise Tax Board terminates the taxpayer's taxable year under Section 18642 (relating to tax in jeopardy).

(b) The provisions of Section 443(c) of the Internal Revenue Code, relating to adjustment in deduction for personal exemption, shall be applied to the credit allowed under Section 17054 in lieu of the deduction allowed by Section 151 of the Internal Revenue Code.

SEC. 11. Section 17570 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 17854 of the Revenue and Taxation Code is amended to read:

17854. In the case of a nonresident partner, guaranteed payments, as defined by Section 707(c) of the Internal Revenue Code, shall be gross income from sources within this state in the same manner as if those payments were a distributive share of that partnership.

SEC. 13. Section 18515.3 of the Revenue and Taxation Code is amended to read:

18515.3. (a) This article shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1992, deletes that date, in which event subdivision (b) shall apply.

(b) If the repeal date specified in subdivision (a) has been deleted and if, thereafter, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000), then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. If necessary, for years after the repeal date in subdivision (a) is deleted, the Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 14. Section 18544 of the Revenue and Taxation Code is amended to read:

18544. All money transferred to the California Alzheimer's Disease and Related Disorders Research Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the appropriate state department as established by the

Secretary of the Health and Welfare Agency in consultation with the Department of Aging, and any others which the secretary deems appropriate. These funds shall be expended for the purpose of conducting research relating to the care, treatment, and the cure of Alzheimer's disease through contracts or grants developed and awarded as determined by the Secretary of the Health and Welfare Agency, in consultation with the Department of Aging and any others which the secretary deems appropriate.

SEC. 15. Section 18689 of the Revenue and Taxation Code, as amended by Chapter 452 of the Statutes of 1990, is amended to read:

18689. Except as provided in Section 18692, interest shall be imposed under Section 18686 with respect to any assessable penalty, additional amount, or addition to tax imposed under this article, as follows:

(a) In the case of a penalty, additional amount, or addition to tax which, when assessed, is due and payable on notice and demand, other than a penalty imposed under Section 18681 (relating to failure to file a return on or before the due date), Section 18684.2 (relating to underpayment of tax), or Section 18685 (relating to imposition of the accuracy-related penalty), interest shall be imposed from the date of the notice and demand to the date of payment.

(b) In the case of a penalty, additional amount, or addition to tax which is initially assessed as a deficiency, other than a penalty or addition to tax imposed under Section 18681 (relating to failure to file a return on or before the due date), Section 18684.2 (relating to underpayment of tax), or Section 18685 (relating to imposition of the accuracy-related penalty), interest shall be imposed from the date of the notice of proposed assessment to the date of payment.

(c) In the case of a penalty or addition to tax imposed by Section 18681 (relating to failure to file a return on or before the due date), Section 18684.2 (relating to underpayment of tax), or Section 18685 (relating to imposition of the accuracy-related penalty), for the period which—

(1) Begins on the date on which the return of the tax with respect to which that penalty is imposed is required to be filed (including any extensions), and

(2) Ends on the date of payment of that penalty or addition to tax.

(e) The amendments to subdivisions (b) and and (c) (former subdivisions (c) and (d)) made by Chapter 1352 of the Statutes of 1989 shall apply only to returns, the due date for which, determined without regard to extensions, is after December 31, 1988.

SEC. 16. Section 18698 of the Revenue and Taxation Code is amended to read:

18698. (a) No addition to the tax shall be made under Section 18682 or 18684.2 for failure to make timely payment of tax with respect to a period during which a case is pending under Title 11 of the United States Code—

(1) If such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of

funds of the estate to pay administrative expenses, or

(2) If—

(A) Such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee, and

(B) (i) The petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or

(ii) The date for making the addition to the tax occurs on or after the day on which the petition was filed.

(b) Subdivision (a) shall not apply to any liability for an addition to the tax which arises from the failure to pay or deposit a tax withheld or collected from others and required to be paid to the State of California.

SEC. 17. Section 18861 of the Revenue and Taxation Code is amended to read:

18861. If any amount due under this part or any amount that may be collected by the Franchise Tax Board as though it were a tax is not paid, the Franchise Tax Board may file in the Office of the County Clerk of Sacramento County, or any other county, a certificate specifying the amount due, the name and last known address of the taxpayer liable for the amount due, and the fact that the Franchise Tax Board has complied with all provisions of the law in the computation and levy of the amount due, and a request that judgment be entered against the taxpayer in the amount set forth in the certificate.

SEC. 18. Section 18862 of the Revenue and Taxation Code is amended to read:

18862. The county clerk immediately upon the filing of the certificate shall enter a judgment for the people of the State of California against the taxpayer in the amount set forth in the certificate. The county clerk may file the judgment in a loose-leaf book entitled "Personal Income Tax Judgments."

SEC. 19. Section 18863 of the Revenue and Taxation Code is amended to read:

18863. An abstract or a copy of the judgment may be recorded with the county recorder of any county. From the time of the recording, the amount set forth constitutes a lien upon all real property of the taxpayer in the county, owned by the taxpayer or afterward and before the lien expires acquired by the taxpayer. The lien has the force, effect, and priority of a judgment lien and continues for 10 years from the date of the recording unless sooner released or otherwise discharged.

SEC. 20. Section 19254 of the Revenue and Taxation Code is amended to read:

19254. (a) The Franchise Tax Board, for the purpose of administering its duties under this part, including ascertaining the correctness of any return; making a return where none has been made; determining or collecting the liability of any person in respect of any liability imposed by this part (or the liability at law or in equity

of any transferee in respect of such liability); shall have the power to require by demand, that an entity of any kind including, but not limited to, employers, persons, or financial institutions provide information or make available for examination or copying at a specified time and place, or both, any book, papers, or other data which may be relevant to that purpose. Any demand to a financial institution shall comply with the California Right to Financial Privacy Act set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. Information which may be required upon demand includes, but is not limited to, any of the following:

(1) Addresses and telephone numbers of persons designated by the Franchise Tax Board.

(2) Information contained on Federal Form W-2 (Wage and Tax Statement), Federal Form W-4 (Employee's Withholding Allowance Certificate), or State Form DE-4 (Employee's Withholding Allowance Certificate).

(b) The Franchise Tax Board may require the attendance of the taxpayer or of any other person having knowledge in the premises and may take testimony and require material proof for its information and administer oaths to carry out the provisions of this part.

(c) The Franchise Tax Board may issue subpoenas or subpoenas duces tecum, which subpoenas must be signed by any member of the Franchise Tax Board and may be served on any person for any purpose.

(d) Obedience to subpoenas or subpoenas duces tecum issued in accordance with this section may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 21. Section 19283 of the Revenue and Taxation Code is amended to read:

19283. A return or return information may be disclosed in a judicial or administrative proceeding pertaining to tax administration, if—

(a) The taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability with respect to any tax imposed under this part; or

(b) The treatment of an item reflected on the return is directly related to the resolution of an issue in the proceeding; or

(c) The return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

SEC. 22. Section 19285 of the Revenue and Taxation Code is amended to read:

19285. In a matter involving tax administration under this part, a

return or return information shall be open to inspection by the Attorney General or other legal representatives of the state, if—

(a) The taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability with respect to any tax imposed under this part; or

(b) The treatment of an item reflected on the return is related to the resolution of an issue in the proceeding or investigation; or

(c) The return or return information relates or may relate to a transactional relationship between a person who is a party to the proceeding and the taxpayer, which affects or may affect, the resolution of an issue in the proceeding or investigation.

In addition, the Attorney General may inspect any report or return required under this part when required in the enforcement of any public or charitable trust or in compelling adherence to any charitable purposes for which any nonprofit corporation is formed.

SEC. 23. Section 19285.5 of the Revenue and Taxation Code is amended to read:

19285.5. For purposes of this article.

(a) The term "return" means any tax or information return, or claim for refund required by, or provided for or permitted under, the provisions of this part or Part 11 (commencing with Section 23001) which is filed with the Franchise Tax Board by, on behalf of, or with respect to any person, corporation, bank, partnership, estate, or trust, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(b) The term "return information" means a taxpayer's identity, the nature, source, or amount of his, her, or its income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Franchise Tax Board with respect to a return or with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of any person under this part or Part 11 (commencing with Section 23001) for any tax, addition to tax, penalty, interest, fine, fee, forfeiture, or other imposition, or offense.

(c) The term "taxpayer return information" means return information as defined in subdivision (b) which is filed with, or furnished to, the Franchise Tax Board by or on behalf of the taxpayer to whom the return information relates.

(d) The term "tax administration" means the administration, management, conduct, direction, and supervision of the execution and application of this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001).

SEC. 24. Section 19411.1 of the Revenue and Taxation Code is amended and renumbered to read:

18699.1. (a) In addition to any criminal penalty provided by law if:

(1) Any individual makes a statement under Section 13040, 13041, or 13042 of the Unemployment Insurance Code which results in a decrease in the amounts deducted and withheld under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code; and

(2) As of the time the statement was made, there was no reasonable basis for the statement, the individual shall pay a penalty of five hundred dollars ($500) for the statement. Any penalty so imposed shall be paid upon notice and demand from the Franchise Tax Board and shall be collected as a tax.

(b) The Franchise Tax Board may waive (in whole or in part) the penalty imposed under subdivision (a) if the taxes imposed under this part with respect to the individual for the taxable year are equal to or less than the sum of both of the following:

(1) The credits against those taxes allowed by Chapter 2 (commencing with Section 17041) and Section 18551.1.

(2) The payments of estimated tax which are considered payments on account of those taxes.

(c) This section supersedes Section 13101 of the Unemployment Insurance Code and shall apply to acts and failures to act after December 31, 1981.

SEC. 25. Section 19415 of the Revenue and Taxation Code is amended and renumbered to read:

18699.2 A penalty shall be imposed for promoting abusive tax shelters. The penalty shall be determined in accordance with the provisions of Section 6700 of the Internal Revenue Code.

SEC. 26. Section 19416 of the Revenue and Taxation Code is amended and renumbered to read:

18699.3. A penalty shall be imposed for aiding and abetting understatement of tax liability. The penalty shall be determined in accordance with the provisions of Section 6701 of the Internal Revenue Code.

SEC. 27. Section 19417 of the Revenue and Taxation Code is amended and renumbered to read:

18699.4. A penalty shall be imposed for filing a frivolous return. The penalty shall be determined in accordance with Section 6702 of the Internal Revenue Code, except that it shall be applied to returns required to be filed under this part.

SEC. 28. Section 19418 of the Revenue and Taxation Code is amended and renumbered to read:

18699.5. (a) In any proceeding involving the issue of whether or not any person is liable for a penalty under Section 18699.2, 18699.3, or 18699.4, the burden of proof with respect to that issue shall be on the Franchise Tax Board.

(b) Sections 18590 through 18597, inclusive, (relating to deficiency procedures) shall not apply with respect to the assessment or collection of the penalties provided by Sections 18699.2, 18699.3,

and 18699.4.

(c) (1) If, within 30 days after the day on which notice and demand of any penalty under Section 18699.2, 18699.3, or 18699.4 is made against any person, that person pays an amount which is not less than 15 percent of the amount of that penalty and files a claim for refund of the amount so paid, no levy or proceeding in court for the collection of the remainder of that penalty shall be made, begun, or prosecuted until the final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding Section 19081, the beginning of that proceeding or levy during the time that prohibition is in force may be enjoined by a proceeding in the superior court.

(2) If, within 30 days after the day on which the claim for refund of any partial payment of any penalty under Section 18699.2, 18699.3, or 18699.4 is denied (or, if earlier, within 30 days after the expiration of six months after the day on which a claim for refund was filed), the person fails to begin a proceeding in the superior court for the determination of his or her liability for that penalty, paragraph (1) shall cease to apply with respect to that penalty, effective on the day following the close of the applicable 30-day period referred to in this paragraph.

(3) The running of the period of limitations provided in Section 18831 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Franchise Tax Board is prohibited from collecting by levy or a proceeding in court.

SEC. 29. Section 19419 of the Revenue and Taxation Code is amended to read:

19419. (a) A civil action in the name of the State of California to enjoin any person from further engaging in conduct subject to penalty under Section 18699.2 (relating to the penalty for promoting abusive tax shelters, etc.) or Section 18699.3 (relating to penalty for aiding and abetting understatement of tax liability) may be commenced at the request of the Franchise Tax Board. Any action under this section shall be brought in accordance with the provisions of Section 19407. The court may exercise its jurisdiction over that action separate and apart from any other action brought by the State of California against that person.

(b) In any action under subdivision (a), the court may enjoin the person from engaging in the conduct or in any other activity subject to penalty under Section 18699.2 or 18699.3, if the court finds both of the following:

(1) That the person has engaged in any conduct subject to penalty under Section 18699.2 (relating to penalty for promoting abusive tax shelters, etc.) or Section 18699.3 (relating to penalty for aiding and abetting understatement of tax liability).

(2) That injunctive relief is appropriate to prevent recurrence of that conduct.

SEC. 30. Section 23058 of the Revenue and Taxation Code is

amended to read:

23058. Unless otherwise specifically provided therein, the provisions of any act:

(a) Which affect the imposition or computation of taxes, additions to tax other than Sections 25951 to 25954.5, inclusive, penalties, or the allowance of credits against the tax, shall be applied to income years beginning on or after January 1 of the year in which the act becomes law.

(b) Which change the provisions of Sections 25561 to 25563, inclusive, (relating to payment of estimated tax) or Sections 25951 to 25954.5, inclusive, (relating to underpayment of estimated tax) shall be applied to income years beginning on or after January 1 of the year immediately following the year in which the act becomes law.

(c) Which otherwise affect the provisions of this part shall be applied on and after the date the act becomes law.

SEC. 31. Section 23151 of the Revenue and Taxation Code is amended to read:

23151. (a) With the exception of financial corporations, every corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed at the rate of 7.6 percent upon the basis of its net income for the next preceding income year, or if greater, the minimum tax specified in Section 23153.

(b) For calendar or fiscal years ending after June 30, 1973, the rate of tax shall be 9 percent instead of 7.6 percent as provided by subdivision (a).

(c) For calendar or fiscal years ending in 1980 to 1986, inclusive, the rate of tax shall be 9.6 percent.

(d) For calendar or fiscal years ending in 1987 and thereafter, the tax rate shall be 9 3 percent.

SEC. 32. Section 23153 of the Revenue and Taxation Code is amended to read:

23153. (a) Every bank and corporation described in subdivision (b) shall be subject to the minimum tax specified in subdivision (d) from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date of dissolution or withdrawal as provided in Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state.

(b) Unless expressly exempted by the provisions of this part or the Constitution of this state, subdivision (a) shall apply to each of the following:

(1) Every bank or corporation which is incorporated under the laws of this state.

(2) Every bank or corporation which is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing

with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every bank or corporation which is doing business within the limits of this state.

(c) Credit unions shall not be subject to the minimum tax specified in this section.

(d) (1) Except as provided in paragraph (2), banks and corporations subject to the minimum tax shall pay annually to the state a minimum tax of eight hundred dollars ($800).

(2) The minimum tax shall be twenty-five dollars ($25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in other than mining.

SEC. 33. Section 23801 of the Revenue and Taxation Code is amended to read:

23801. (a) (1) A corporation may not elect to be treated as an "S corporation" unless it has in effect for federal purposes a valid election under Section 1362(a) of the Internal Revenue Code for the same year.

(2) For income years beginning in 1987—

(A) A corporation which has in effect a valid federal election, for the income year beginning in 1987, shall be deemed to have elected to be treated as an "S corporation" for purposes of this part, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(B) A corporation to which subparagraph (A) applies, but which is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in such form and in such manner as the Franchise Tax Board may prescribe.

(C) A corporation which is deemed to have elected to be treated as an "S corporation" under subparagraph (A) shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(3) For income years beginning in 1988 or 1989—

(A) A corporation which had in effect a valid federal election for the preceding year, but was a "C corporation" for purposes of this part for that preceding year, may elect to be treated as an "S

corporation" for purposes of this part by making an election in accordance with the provisions of Section 1362 of the Internal Revenue Code in such form and in such manner as the Franchise Tax Board may prescribe.

(B) A corporation which did not have in effect a valid federal election for the preceding year and which makes a federal election for the income year under Section 1362(a) of the Internal Revenue Code shall be deemed to have made an election to be treated as an "S corporation" for purposes of this part on the same date as the date of its federal election, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(C) A corporation to which subparagraph (B) applies, but which is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in such form and in such manner as the Franchise Tax Board may prescribe.

(D) A corporation which elects to be treated as an "S corporation" under subparagraph A for an income year beginning in 1988 shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(4) For income years beginning on or after January 1, 1990—

(A) An election under Section 1362(a) of the Internal Revenue Code, which is first effective for an income year beginning on or after January 1, 1990, shall be an election to which subdivision (g) of Section 23051.5 applies and shall be deemed to have been made for purposes of this part on the same date as the date of the federal election, unless the corporation files a California election under clause (ii) to be treated as a "C corporation" for purposes of this part.

(i) The federal "S" election shall be reported for purposes of this part in the form and manner as prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal election under Section 1362(a) of the Internal Revenue Code for that income year.

(ii) The California election to be a "C corporation" may only be made by a corporation incorporated in California or qualified to do business in California and shall be made in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(B) A corporation, which has in effect a valid election under Section 1362(a) of the Internal Revenue Code, but which is a "C corporation" for purposes of this part may elect to be treated as an "S corporation" by making an election in the form and manner as prescribed by the Franchise Tax Board at the time required for making an "S" election under Section 1362(a) of the Internal

Revenue Code for that income year, unless prohibited from doing so by Section 1362(g) of the Internal Revenue Code, relating to election after termination.

(C) In the event a corporation which is not doing business in California becomes subject to this part by qualifying to do business in California, the corporation is deemed to have made an election to be treated as an "S corporation" for the income year during which the corporation qualifies to do business in California, unless the corporation files a California election in accordance with clause (ii) to be treated as a "C corporation" for that income year.

(i) The federal "S" election shall be reported for purposes of this part within two and one-half months after qualifying to do business in California in the form and manner as prescribed by the Franchise Tax Board.

(ii) The California election to be a "C corporation" shall be made in the form and manner as prescribed by the Franchise Tax Board no later than the following:

(I) For an income year beginning in 1990, two and one-half months after qualifying to do business in California.

(II) For an income year beginning on or after January 1, 1991, the last date allowed for filing a federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(D) (i) A corporation that is not qualified to do business in California, but which is treated as an "S corporation" for federal purposes, shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(ii) If a corporation described in clause (i) elected to be treated as a "C corporation" under this section prior to its amendment by the act adding this paragraph during the 1989–90 Regular Session, that election shall be revoked for income years beginning on or after January 1, 1990. The corporation shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(E) For purposes of this section, "qualified to do business in California" or "qualifying to do business in California" means incorporating or obtaining a certificate of qualification pursuant to the Corporations Code.

(F) For purposes of this section:

(i) A timely election to be treated as a "C corporation" shall be treated as a revocation and Section 1363(g), relating to election after termination, shall apply.

(ii) An untimely election to be treated as a "C corporation" shall be null and void and shall not be applied to either the current or any subsequent income year.

(b) If a corporation subject to tax under this part elects to be treated as an "S corporation" and has one or more shareholders who are nonresidents of this state or is a trust with a nonresident fiduciary, each of the following shall be required:

(1) Each nonresident shareholder or fiduciary shall file with the return a statement of consent by that shareholder or fiduciary to be subject to the jurisdiction of the State of California to tax the shareholder's pro rata share of the income attributable to California sources.

(2) An "S corporation" shall include in its return for each income year a list of shareholders in the form and in the manner prescribed by the Franchise Tax Board.

(3) Failure to meet the requirements of this subdivision shall be grounds for retroactive revocation of the election pursuant to this chapter.

(c) Except as provided in subdivision (d), a corporation which makes a valid election to be treated as an "S corporation" for purposes of this part shall not be included in a combined report pursuant to Article 1 (commencing with Section 25101) of Chapter 17.

(d) (1) In cases where the Franchise Tax Board determines that the reported income or loss of a group of commonly owned or controlled corporations (within the meaning of Section 25105), which includes one or more corporations electing to be treated as an "S corporation" under Chapter 4 5 (commencing with Section 23800), does not clearly reflect income (or loss) of a member of such group or represents an evasion of tax by one or more members of such group, and the Franchise Tax Board determines that the comparable uncontrolled price method prescribed by regulations pursuant to Section 482 of the Internal Revenue Code cannot practically be applied, the Franchise Tax Board may, in lieu of other methods prescribed by regulations pursuant to Section 482 of the Internal Revenue Code, apply methods of unitary combination, pursuant to Article 1 (commencing with Section 25101) of Chapter 17, to properly reflect the income or loss of the members of the group.

(2) The application of the provisions of this subdivision shall not affect the election of any corporation to be treated as an "S corporation."

(e) The tax for a "C corporation" for a short year shall be determined in accordance with Chapter 13 (commencing with Section 24631), in lieu of Section 1362(e) (5) of the Internal Revenue Code.

(f) (1) A termination of a federal election pursuant to Section 1362(d) of the Internal Revenue Code, that is not an inadvertent termination pursuant to Section 1362(f) of the Internal Revenue Code, shall simultaneously terminate the "S corporation" election for purposes of Part 10 (commencing with Section 17001) and this part.

(2) A federal termination by revocation shall be effective for purposes of this part and shall be reported to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing federal termination for that year under Section 1362(d) of the Internal

Revenue Code.

(3) A corporation which is qualified to do business in California and has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, may revoke its "S" election for purposes of this part without revoking its federal election. The revocation for purposes of this part shall be made by providing a written notification to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board which includes the California corporation number and meets the requirements of Section 1362(d)(1) of the Internal Revenue Code.

(g) For income years beginning on or after January 1, 1990, if a corporation, which has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, fails to make a "C corporation" election under clause (ii) of subparagraphs (A) and (C) of paragraph (4) of subdivision (a) or to terminate by revocation under paragraph (3) of subdivision (f), the corporation shall be treated as an "S corporation" pursuant to subparagraph (A) of paragraph (4)

SEC 34. Section 24634 of the Revenue and Taxation Code is amended to read:

24634. (a) Notwithstanding Section 24632, a return for a period of less than 12 months (referred to in this article as "short period") shall be made under any of the following circumstances:

(1) When the taxpayer, with the approval of the Franchise Tax Board, changes its annual accounting period. In such a case, the return shall be made for the short period beginning on the day after the close of the former income year and ending at the close of the day before the day designated as the first day of the new income year.

(2) When the taxpayer is in existence during only part of what would otherwise be its income year.

(3) When the Franchise Tax Board terminates the taxpayer's income year under Section 25761 (relating to tax in jeopardy).

(b) This section shall apply whether or not a federal return is required to be filed for a period of less than 12 months.

SEC. 35. Section 24693 is added to the Revenue and Taxation Code, to read:

24693. (a) The provisions of Section 468B of the Internal Revenue Code, relating to special rules for designated settlement funds, shall apply, except as otherwise provided.

(b) The provisions of Section 468B(b) of the Internal Revenue Code, which impose a tax upon the designated settlement fund shall be modified for purposes of this part to provide that a tax shall be imposed upon the gross income of the fund at a rate equal to the rate in effect for the taxable year under Section 23501. The income tax imposed upon the gross income of the fund by this section is in lieu of any other tax imposed by this part or Part 10 (commencing with Section 17001) upon or measured by that income

SEC. 36. Section 24990.7 is added to the Revenue and Taxation

Code, to read:

24990.7. The provisions of Section 1248 of the Internal Revenue Code, relating to gain from certain sales or exchanges of stock in certain foreign corporations, shall not apply to income years beginning on or after January 1, 1990.

SEC. 37. Section 25901c of the Revenue and Taxation Code, as amended by Chapter 452 of the Statutes of 1990, is amended to read:

25901c. Except as provided in Section 25903, interest shall be imposed under Section 25901 with respect to any assessable penalty, additional amount, or addition to the tax imposed under this article, as follows:

(a) In the case of a penalty, additional amount, or addition to tax which, when assessed, is due and payable on notice and demand, other than a penalty imposed under Section 25931 (relating to failure to file a return on or before the due date), Section 25934.2 (relating to underpayment of tax), or Section 25935 (relating to imposition of the accuracy-related penalty), interest shall be imposed from the date of the notice and demand to the date of payment.

(b) In the case of a penalty, additional amount, or addition to tax which is initially assessed as a deficiency, other than a penalty or addition to tax imposed under Section 25931 (relating to failure to file a return on or before the due date), Section 25934.2 (relating to underpayment of tax), or Section 25935 (relating to imposition of the accuracy-related penalty), interest shall be imposed from the date of the notice of proposed assessment to the date of payment.

(c) In the case of a penalty or addition to tax imposed by Section 25931 (relating to failure to file a return on or before the due date), Section 25934.2 (relating to underpayment of tax), or Section 25935 (relating to imposition of the accuracy-related penalty) for the period which—

(1) Begins on the date on which the return of the tax with respect to which that penalty is imposed is required to be filed (including any extensions), and

(2) Ends on the date of payment of that penalty or addition to tax.

(d) The amendments to subdivision (c) (former subdivision (d)) made by Chapter 1352 of the Statutes of 1989, shall apply only to returns the due date for which, determined without regard to extensions, is after December 31, 1988.

SEC. 38. Article 8 (commencing with Section 26350) is added to Chapter 23 of Part 11 of the Revenue and Taxation Code, to read:

Article 8. Judgment for Taxes

26350. If any amounts due under this part or any amount that may be collected by the Franchise Tax Board as though it were a tax are not paid, both of the following shall apply:

(a) The Franchise Tax Board may file in the Office of the County Clerk of Sacramento County, or any other county, a certificate specifying the amount due, the name and last known address of the

taxpayer liable for the amount due, and the fact that the Franchise Tax Board has complied with all provisions of this part in the computation and levy of the amount due, and a request that judgment be entered against the taxpayer in the amount set forth in the certificate.

(b) The provisions of Article 3 (commencing with Section 18861) of Chapter 19 of Part 10 shall apply, except that, in the case of Section 18862, the county clerk may file the judgment in a loose-leaf book entitled "Bank and Corporation Tax Judgments."

SEC. 39. Section 26423 of the Revenue and Taxation Code is amended to read:

26423. (a) The Franchise Tax Board, for the purpose of administering its duties under this part, including ascertaining the correctness of any return; making a return where none has been made, determining or collecting the liability of any person in respect of any liability imposed by this part (or the liability at law or in equity of any transferee in respect of such liability); shall have the power to require by demand, that an entity of any kind including, but not limited to, employers, persons, or financial institutions provide information or make available for examination or copying at a specified time and place, or both, any books, papers or other data which may be relevant to that purpose. Any demand to a financial institution shall comply with the California Right to Financial Privacy Act set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code.

(b) The Franchise Tax Board may require the attendance of the taxpayer or of any other person having knowledge in the premises and may take testimony and require material proof for its information and administer oaths to carry out the provisions of this part.

(c) The Franchise Tax Board may issue subpoenas or subpoenas duces tecum, which subpoenas must be signed by any member of the Franchise Tax Board and may be served on any person for any purpose.

(d) Obedience to subpoenas or subpoenas duces tecum issued in accordance with this section may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 40. Section 26453 of the Revenue and Taxation Code is amended to read:

26453. A return or return information may be disclosed in a judicial or administrative proceeding pertaining to tax administration, if—

(a) The taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability with respect to any tax imposed under this part; or

(b) The treatment of an item reflected on the return is directly

related to the resolution of an issue in the proceeding; or

(c) The return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

SEC. 41. Section 26453.2 of the Revenue and Taxation Code is amended to read:

26453.2. In a matter involving tax administration under this part, a return or return information shall be open to inspection by the Attorney General or other legal representatives of the state, if—

(a) The taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability with respect to any tax imposed under this part; or

(b) The treatment of an item reflected on the return is or may be related to the resolution of an issue in the proceeding or investigation; or

(c) The return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer, which affects or may affect, the resolution of an issue in the proceeding or investigation.

In addition, the Attorney General may inspect any report or return required under this part when required in the enforcement of any public or charitable trust or in compelling adherence to any charitable purposes for which any nonprofit corporation is formed.

SEC. 42. Section 26453.5 of the Revenue and Taxation Code is amended to read:

26453.5. For purposes of this article:

(a) The term "return" means any tax or information return, or claim for refund required by, or provided for or permitted under, the provisions of this part or Part 10 (commencing with Section 17001) which is filed with the Franchise Tax Board by, on behalf of, or with respect to any person, corporation, bank, partnership, estate or trust, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(b) The term "return information" means a taxpayer's identity, the nature, source, or amount of his, her, or its income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Franchise Tax Board with respect to a return or with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of any person under this part or Part 10 (commencing with Section 17001) for any tax, addition to tax, penalty, interest, fine, fee, forfeiture, or other imposition or offense.

(c) The term "taxpayer return information" means return

information as defined in subdivision (b) which is filed with, or furnished to, the Franchise Tax Board by or on behalf of the taxpayer to whom the return information relates.

(d) The term "tax administration" means the administration, management, conduct, direction, and supervision of the execution and application of this part, Part 10 (commencing with Section 17001), and Part 10.7 (commencing with Section 21001).

SEC. 43. Sections 17, 18, 19, and 38 of this act shall be operative for any account referred for out-of-state collection via an agreement entered into pursuant to Section 18837 or 26254 of the Revenue and Taxation Code.

SEC. 44. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This act makes various changes to the Personal Income Tax Law and the Bank and Corporation Tax Law, including, among other things, (1) technical changes to provisions of Chapter 452 of the Statutes of 1990 which was enacted to provide necessary funding to alleviate the current budget problems, and (2) amendments that are necessary to achieve the legislative intent of Chapter 1490 of the Statutes of 1984 which is to allow private out-of-state collection agencies to receive compensation for their services by collecting it from the out-of-state taxpayers rather than as a General Fund expenditure. To ensure that these provisions be given effect at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1349

An act to amend Sections 50199.9, 50199.14, 50199.17, and 50199.20 of the Health and Safety Code, and to amend Sections 17039, 17052.5, 17052.6, 17053.20, 17057.5, 17058, 17062, 17551, 18001, 18002, 18006, 18035.5, 18470, 18515.2, 18802.2, 23036, 23455, 23459, 23601.5, 23605, 23610.4, 23610.5, 23617.5, 24356.2, 24357.7, 24358, 24422, 24424, 24466, 24564, 24637, 24870, 24872, 24953.5, 24966, and 25401c of, to add Section 24990.7 to, and to repeal Sections 24413.2, 24413.3, and 24422.1 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 50199.9 of the Health and Safety Code, as amended by Chapter 166 of the Statutes of 1990, is amended to read:

50199.9. As used in this chapter:

(a) "Committee" means the Mortgage Bond and Tax Credit Allocation Committee. On and after July 1, 1990, the Mortgage Bond and Tax Credit Allocation Committee is renamed the California Tax Credit Allocation Committee and thereafter, all references to "committee" shall mean the California Tax Credit Allocation Committee.

(b) "Housing credit" means the tax credit for low-income rental housing provided under Section 42 of the federal Internal Revenue Code (26 U.S.C. Sec. 42).

(c) "Housing credit applicant" means any owner or prospective owner of a qualifying low-income building or project who applies for either of the following:

(1) An allocation of a portion of the current state housing credit ceiling.

(2) A reservation of a portion of the anticipated state housing credit ceiling of a subsequent year.

(d) "Housing credit ceiling" means the amount specified in Section 42(h)(3)(C) of the federal Internal Revenue Code. (26 U.S.C. Sec. 42(h)(3)(C)).

(e) "Local agency" means a city, county, or city and county.

(f) "Qualified low-income building" or "project" has the meaning specified in Section 42(c)(2) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(c)(2)).

SEC. 1.1. Section 50199.14 of the Health and Safety Code, as amended by Chapter 166 of the Statutes of 1990, is amended to read:

50199.14. (a) The committee shall allocate the housing credit on a regular basis consisting of not less than three periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, or the adoption of rules or regulations, or other similar events prevent the use of three allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(b) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code.

(c) In order to promote the provision of affordable low-income housing within and throughout the state, the committee shall allocate housing credits in accordance with the qualified allocation plan and regulations which shall include the following provisions:

(1) All housing sponsors, as defined by paragraph (3) of subdivision (a) of Section 17058 of the Revenue and Taxation Code,

shall demonstrate at the time the application is filed with the committee, that the project meets the following threshold requirements:

(A) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(B) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(C) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(D) The housing sponsor shall have and maintain control of the site for the project.

(E) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(F) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(G) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, supportable debt service, reserves, funds set aside for rental subsidies, and required equity, for the low-income units, and a development fee that does not exceed a specified percentage of the qualified basis of the project prior to inclusion of the development fee in the qualified basis, as determined by the committee.

(2) The committee shall give a preference to those projects satisfying all of the threshold requirements of paragraph (1) if:

(A) The project serves the lowest income tenants at rents affordable to those tenants; or

(B) The project is obligated to serve qualified tenants for the longest period.

(3) In addition to the provisions of paragraphs (1) and (2) of subdivision (c), the committee shall use the following criteria in allocating housing credits:

(A) Projects serving large families in which the greatest percentage of total square feet of all residential units is comprised of low-income units with three or more bedrooms.

(B) Projects providing single room occupancy units serving very low income tenants

(C) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c) of Section 17058 of the Revenue and Taxation Code.

(D) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity

constitutes at least 30 percent of the total project development costs.

(E) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(F) Projects located within a "difficult to develop area" or a "qualified census tract" as defined in Section 42(d) (5) (C) of the Internal Revenue Code.

(d) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(e) The committee shall allocate credits to a project under this section prior to allocating credit to that project under Sections 17058 and 23610.5 of the Revenue and Taxation Code.

(f) The committee shall allocate credits to a project only if the housing sponsor enters into a regulatory agreement that provides for an "extended use period" as defined in subparagraph (D) of paragraph (6) of subsection (h) of Section 42 of the Internal Revenue Code which shall terminate on the date specified in the regulatory agreement or the date the project is acquired in foreclosure, including any instrument in lieu of foreclosure, whichever occurs first and subclause (II) of subparagraph (E) of clause (i) of paragraph (6) of subsection (*l*) of Section 42 shall not apply. The extended use period shall be subject to the following limitations:

(1) If, after the first 18 years of the extended use period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of subsection (g) of Section 42 of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that, once a project is again economically feasible, the housing sponsor designates the next available units as low-income units subject to the set-aside and rent requirements, up to the number of low-income units necessary to arrive at the original applicable fraction, while keeping the project economically feasible.

(2) For purposes of paragraph (1), "economically feasible" means that project revenue equals or exceeds project operating expenses, excluding any return on investment.

(3) For purposes of paragraph (2), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced, except to the extent the excess was used for rehabilitation of the project.

SEC. 1.3. Section 50199.17 of the Health and Safety Code, as added by Chapter 166 of the Statutes of 1990, is amended to read:

50199.17. (a) The committee may adopt, amend, or repeal rules and regulations for the allocation of housing credits pursuant to this chapter and Sections 17058 and 23610.5 of the Revenue and Taxation

Code without complying with the procedural requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as described in subdivision (b).

(b) The committee shall provide a notice of proposed action as described in Section 11346.5 of the Government Code. The notice of proposed action shall be provided to the public at least 21 days before the close of the public comment period, and the committee shall schedule at least one public hearing as described in Section 11346.8 of the Government Code before the close of the public comment period. The committee shall maintain a rulemaking file as described in Section 11347.3 of the Government Code. The final version of the regulations shall be accompanied by a final statement of reasons as described in subdivision (b) of Section 11346.7 of the Government Code.

(c) These rules and regulations shall be effective immediately upon adoption by the committee.

(d) The committee may also adopt, amend, or repeal emergency rules and regulations pursuant to this chapter and pursuant to Sections 17057.5, 17058, 23610.4, and 23610.5 of the Revenue and Taxation Code. The adoption, amendment, or repeal of these regulations shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning or purposes of Section 11346.1 of the Government Code.

SEC. 1.4. Section 50199.20 of the Health and Safety Code, as amended by Chapter 166 of the Statutes of 1990, is amended to read:

50199.20. (a) Not less than 20 percent of the federal ceiling on low-income housing tax credits shall be set aside for allocation to rural areas as defined in Section 50199.21. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project if there are eligible rural applications pending on October 31.

(b) Up to 2 percent of the low-income housing tax credit available under this chapter and Sections 17058 and 23610.5 of the Revenue and Taxation Code may be set aside for small developments as determined by the committee. Any amount of credit set aside for small developments remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for small developments shall be considered available for any eligible projects if there are eligible small development applications pending on October 31.

SEC. 1.7. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus

the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits which do not contain carryover or refundable provisions, except those described in paragraphs (4), (5), and (6) and in Section 17053.14 (relating to credit for political contributions).

(2) Credits which contain carryover provisions but do not contain refundable provisions.

(3) Credits which contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) The low-income tax credit allowed by Section 17069.

(7) Credits which contain refundable provisions but do not contain carryover provisions.

For the purposes of paragraphs (2), (3), and (7), the order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 18551.1 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (7) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax (before reduction for the alternative credit for taxes paid to another state), as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063—

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by Section 17053.5 (relating to the renter's credit).

(F) The credit allowed by Section 17057 (relating to clinical testing expenses).

(G) The credit allowed by Section 17058 (relating to low-income

housing).

(H) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(I) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(J) The credit allowed by Section 18551.1 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "net tax" until the credit has been exhausted.

(e) This section shall be applied in the computation of taxes for taxable years beginning on or after January 1, 1987

SEC. 2. Section 17052.5 of the Revenue and Taxation Code is amended to read:

17052.5. (a) For taxable years beginning on or after January 1, 1990, and before January 1, 1994, there shall be allowed as a credit against the "net tax" (as defined by Section 17039), an amount equal to 10 percent of the cost of a solar energy system installed on premises, used for commercial purposes, which are located in California and which are owned by the taxpayer during the taxable year. For purposes of taxpayers who lease a solar energy system pursuant to subdivision (j), the tax credit shall apply only to the principal recovery portion of lease payments, as defined in subdivision (*l*), for the term of the lease not to exceed 10 years, which are made during the taxable year, and to the amounts which are expended on the purchased portion of the solar energy system, including installation charges, during the taxable year.

(b) (1) The solar energy tax credit shall be claimed on the state income tax return for the taxable year in which the solar energy system was installed.

(2) The solar energy tax credit may not be claimed for any solar energy system with a generating capacity in excess of 30 megawatts for any taxable year, or portion thereof, for which the Internal Revenue Code does not allow at least a 10-percent tax credit for solar energy systems with a generating capacity in excess of 30 megawatts which is equivalent in scope to the credit available under the Internal Revenue Code for the 1989 calendar year.

(c) A taxpayer who claimed the solar energy tax credit in the state income tax return for the taxable year in which the solar energy system was installed may claim the credit in subsequent years for additions to the system or additional systems by the amount prescribed in subdivision (a).

(d) For purposes of computing the credit provided by this section,

the cost of any solar energy system eligible for the credit shall be reduced by any grant provided by a public entity for that system.

(e) The basis of any system for which a credit is allowed shall be reduced by the amount of the credit and the amount of any grant provided by a utility or public agency for the solar energy system. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(f) With the exception of a husband and wife, if there is more than one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to his or her ownership interests in the premises. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(g) In the case of a partnership, the solar energy tax credit may be divided between the partners pursuant to a written partnership agreement.

(h) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(i) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the current or any prior taxable year as energy conservation measures under this part.

(j) Taxpayers who lease a solar energy system installed on premises in California shall receive a tax credit as provided in subdivision (a), if the lessee can confirm, if necessary, by a written document signed by the lessor that (1) the lessor irrevocably elects not to claim a state tax credit for the solar energy system, and (2) if the system is installed in a locality served by a municipal solar utility, that the lessor holds a valid permit from the municipal solar utility. Leasing requirements may be established by the State Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(k) The State Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. These guidelines and criteria shall include, but are not limited to, minimum requirements for safety, cost-effectiveness in terms of dollars per kilowatt, market readiness, reliability, and durability of solar energy systems. Any solar energy system with a generating capacity in excess of 10 megawatts may qualify for the credit only if the owner of the solar energy system first obtains a finding from the commission that the system is eligible for the credit under the guidelines and criteria established pursuant to this subdivision. Any solar energy system certified by the commission pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code shall be deemed eligible for the credit. The Franchise Tax Board shall

prescribe those regulations as may be necessary to carry out the purposes of this section.

(*l*) For purposes of this section, the following definitions shall apply:

(1) "Installed" means placed in a functionally operative state.

(2) "Cost" includes equipment, installation charges, and compensation paid to the owner of burdened property in connection with the acquisition of a solar easement, as defined in Section 801.5 of the Civil Code, and the fees for the recording of the easement. In the case of a system which is leased, "cost" means the principal recovery portion of lease payments, which is the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest charges and maintenance expenses.

"Cost" does not include interest charges and costs associated with the acquisition of an easement other than a solar easement.

"Cost" includes all components to carry out the intended use of the system if they are an integral part of the system.

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease or easement granting use of the premises, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises, a person who is a member of a nonprofit corporation or association which is a lessee with at least three years remaining on its lease.

(4) "Premises" means the principal stationary location in California where the system is installed for direct use or for purposes of sale of energy, and includes land, easements, and buildings or portions thereof.

(5) "Commercial purposes" means the installation of solar energy systems on premises other than single-family dwellings.

(6) "Single-family dwelling" means single-family residences, mobilehomes, and the individual units of condominiums.

"Single-family dwelling" does not include cooperatives, apartment buildings, or other similar multiple dwellings, including buildings and any other common areas of a condominium maintained by a homeowners' association.

(7) (A) "Solar energy system" means the use of solar devices designed or intended for the individual function of production of electricity in excess of 30 watts per device.

"Solar energy system" includes, but is not limited to, solar thermal electric systems and photovoltaic systems.

For purposes of this section, "solar energy system" does not include solar devices for the individual function of wind energy for the production of electricity or mechanical work.

(B) Eligible solar energy systems shall have a useful life of not less than five years.

(8) "Solar device" means the equipment associated with the collection, conversion, transfer, distribution, storage, or control of

solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(9) "Municipal solar utility" means a city, county, or municipal utility district, or agency thereof, which sells or leases solar or other energy generating equipment or energy saving devices for residential, commercial, agricultural, or industrial uses or which issues permits to companies engaged in the leasing of this equipment.

(m) Except for purposes of subdivision (h) of Section 17052.4, the provisions of this section shall not apply to any solar energy system which continues to qualify for the tax credit authorized by former Section 17052.5 (as amended by Chapter 1200 of the Statutes of 1986) by meeting the eligibility requirements of subdivision (*l*) of that section.

(n) This section shall remain in effect only until December 1, 1994, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit has been exhausted.

SEC. 3. Section 17052.5 of the Revenue and Taxation Code is amended to read:

17052.5. (a) For taxable years beginning on or after January 1, 1990, and before January 1, 1994, there shall be allowed as a credit against the "net tax" (as defined by Section 17039), an amount equal to 10 percent of the cost of a solar energy system installed on premises, used for commercial purposes, which are located in California and which are owned by the taxpayer during the taxable year. For purposes of taxpayers who lease a solar energy system pursuant to subdivision (j), the tax credit shall apply only to the principal recovery portion of lease payments, as defined in subdivision (*l*), for the term of the lease not to exceed 10 years, which are made during the taxable year, and to the amounts which are expended on the purchased portion of the solar energy system, including installation charges, during the taxable year.

(b) The solar energy tax credit shall be claimed on the state income tax return for the taxable year in which the solar energy system was installed.

(c) A taxpayer who claimed the solar energy tax credit in the state income tax return for the taxable year in which the solar energy system was installed may claim the credit in subsequent years for additions to the system or additional systems by the amount prescribed in subdivision (a).

(d) For purposes of computing the credit provided by this section, the cost of any solar energy system eligible for the credit shall be reduced by any grant provided by a public entity for that system.

(e) The basis of any system for which a credit is allowed shall be reduced by the amount of the credit and the amount of any grant provided by a utility or public agency for the solar energy system. The basis adjustment shall be made for the taxable year for which the

credit is allowed.

(f) With the exception of a husband and wife, if there is more than one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to his or her ownership interests in the premises. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(g) In the case of a partnership, the solar energy tax credit may be divided between the partners pursuant to a written partnership agreement.

(h) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(i) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the current or any prior taxable year as energy conservation measures under this part.

(j) Taxpayers who lease a solar energy system installed on premises in California shall receive a tax credit as provided in subdivision (a), if the lessee can confirm, if necessary, by a written document signed by the lessor that (1) the lessor irrevocably elects not to claim a state tax credit for the solar energy system, and (2) if the system is installed in a locality served by a municipal solar utility, that the lessor holds a valid permit from the municipal solar utility. Leasing requirements may be established by the State Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(k) The State Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. These guidelines and criteria shall include, but are not limited to, minimum requirements for safety, cost-effectiveness in terms of dollars per kilowatt, market readiness, reliability, and durability of solar energy systems.

(1) The commission may grant an exemption from any of the guidelines and criteria if the commission finds that the project, when evaluated in its entirety and based on particular circumstances, meets the intent of Chapter 1291 of the Statutes of 1989.

(2) Any solar energy system with a generating capacity in excess of 10 megawatts may qualify for the credit only if the owner of the solar energy system first obtains a finding from the commission that the system is eligible for the credit under the guidelines and criteria established pursuant to this subdivision. Any solar energy system certified by the commission pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code shall be deemed eligible for the credit.

(3) As specified in the guidelines and criteria established by the commission, any solar energy system with a generating capacity in

excess of one megawatt and less than or equal to 10 megawatts may qualify for the credit only if the owner of the solar energy system first obtains a finding from the commission that the system is eligible for the credit under the guidelines and criteria established pursuant to this subdivision.

(4) The Franchise Tax Board shall prescribe those regulations as may be necessary to carry out the purposes of this section.

(*l*) For purposes of this section, the following definitions shall apply:

(1) "Installed" means placed in a functionally operative state.

(2) "Cost" includes equipment, installation charges, and compensation paid to the owner of burdened property in connection with the acquisition of a solar easement, as defined in Section 801.5 of the Civil Code, and the fees for the recording of the easement. In the case of a system which is leased, "cost" means the principal recovery portion of lease payments, which is the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest charges and maintenance expenses.

"Cost" does not include interest charges and costs associated with the acquisition of an easement other than a solar easement.

"Cost" includes all components to carry out the intended use of the system if they are an integral part of the system

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease or easement granting use of the premises, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises, a person who is a member of a nonprofit corporation or association which is a lessee with at least three years remaining on its lease.

(4) "Premises" means the principal stationary location in California where the solar energy system is installed for direct use or for purposes of sale of energy, and includes land, easements, and buildings or portions thereof.

(5) "Commercial purposes" means the installation of solar energy systems on premises other than single-family dwellings.

(6) "Single-family dwelling" means single-family residences, mobilehomes, and the individual units of condominiums.

"Single-family dwelling" does not include cooperatives, apartment buildings, or other similar multiple dwellings, including buildings and any other common areas of a condominium maintained by a homeowners' association.

(7) (A) "Solar energy system" means the use of solar devices designed or intended for the individual function of production of electricity in excess of 30 watts per device.

"Solar energy system" includes, but is not limited to, solar thermal electric systems and photovoltaic systems.

For purposes of this section, "solar energy system" does not include solar devices for the individual function of wind energy for

the production of electricity or mechanical work.

(B) Eligible solar energy systems shall have a useful life of not less than five years.

(8) "Solar device" means the equipment associated with the collection, conversion, transfer, distribution, storage, or control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(9) "Municipal solar utility" means a city, county, or municipal utility district, or agency thereof, which sells or leases solar or other energy generating equipment or energy saving devices for residential, commercial, agricultural, or industrial uses or which issues permits to companies engaged in the leasing of this equipment.

(m) Except for purposes of subdivision (h) of Section 17052.4, the provisions of this section shall not apply to any solar energy system which continues to qualify for the tax credit authorized by former Section 17052.5 (as amended by Chapter 1200 of the Statutes of 1986) by meeting the eligibility requirements of subdivision (*l*) of that section.

(n) This section shall remain in effect only until December 1, 1994, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit has been exhausted.

SEC. 4. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For taxable years beginning on or after January 1, 1990, and before January 1, 1993, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount determined in accordance with Section 21 of the Internal Revenue Code, except that the amount of the credit shall be 30 percent of the allowable federal credit regardless of whether there is a federal tax liability.

(b) This section shall remain in effect only until December 1, 1993, and as of that date is repealed.

SEC. 5. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For taxable years beginning on or after January 1, 1991, and before January 1, 1993, there shall be allowed as a credit against the "net tax" (as defined in Section 17039) an amount determined in accordance with Section 21 of the Internal Revenue Code, except that the amount of the credit shall be a percentage, as provided in subdivision (b), of the allowable federal credit regardless of whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

If the adjusted gross income is:	The percentage of credit is:
$40,000 or less	30%
Over $40,000 but not over $70,000	25%
Over $70,000 but not over $100,000	20%
Over $100,000	15%

(c) This section shall remain in effect only until December 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 6. Section 17053.20 of the Revenue and Taxation Code is amended to read:

17053.20. (a) There shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to the amount determined in subdivision (b) for payments by an eligible employer to provide health coverage for eligible individuals and their dependents.

(b) The amount of the credit allowed by subdivision (a) shall be twenty-five dollars ($25) per month per covered individuals or 25 percent per month of the total amount paid or incurred for such health coverage by the employer during the taxable year, whichever is more, plus twenty-five dollars ($25) per month or 25 percent of the total amount paid or incurred per month per covered individual's dependent or dependents, whichever is more.

(c) To qualify for the credit provided in subdivision (b), an eligible employer must pay or incur at least 75 percent of the monthly premium for health coverage for eligible individuals who elect to have that coverage, or at least 75 percent per month towards health coverage for an eligible individual's dependent or dependents and for which the individual does not pay more than 25 percent, or both. At least annually, the employer shall make participation available to all eligible individuals and to all newly hired individuals within 60 days of the date of employment. Nothing in this section shall require an eligible employer to pay for dependent health coverage in order to qualify for the eligible individual health coverage credit provided herein. Nothing in this section shall prohibit employers from making additional health benefits available to an eligible individual at the employer's or eligible individual's expense.

(d) The credit allowed by this section shall be in lieu of any deduction to which the taxpayer otherwise may be entitled for expenses on which a credit under this section is claimed.

(e) If the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds the "net tax" may be carried over to the "net tax" in succeeding taxable years until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(f) Any amount of expenses paid by an employer under this section shall not be included as income to the eligible individual for purposes of the Personal Income Tax Law. If those expenses have been included in arriving at federal adjusted gross income of the eligible individual, the amount included shall be subtracted in arriving at state adjusted gross income. As used in Section 17071 with respect to the eligible individual, "compensation for services" does not include expenses paid under this section.

(g) With the exception of a husband and wife, if two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the expenses paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to partner's distributive share. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(h) For purposes of this section:

(1) "Eligible employer" means a taxpayer which employs on the average during the taxable year no more than 25 employees including owner-operators and which makes the minimum contribution required by this section on behalf of an eligible individual. An "eligible employer" is not a taxpayer who liquidates the assets of or dissolves the organization of a business, for tax purposes only, in anticipation of becoming eligible for the credit allowed under this section and then subsequently reorganizes the business.

(2) "Eligible individual" means an individual who, on a form prescribed by the Franchise Tax Board and retained by the qualified employer, certifies that he or she is a resident of California (within the meaning of Section 17014), and who:

(A) Performs services for an eligible employer for an average of at least 35 hours per week for remuneration, or

(B) Performs services for an eligible employer for less than 35 hours per week for remuneration, if the eligible employer provides health coverage for that individual and meets all other requirements for the credit under this section, or

(C) As an owner-operator or a managing partner, provides at least an average of 35 hours per week in personal services to the business for which health coverage is contracted.

(3) "Health coverage" means health coverage that, at a minimum, includes basic health care services for illness or injury provided by a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or a health care service plan as defined

under subdivision (f) of Section 1345 of the Health and Safety Code, which is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements, membership contracts, in consideration of premiums or other periodic charges payable to it. "Health coverage" may include provisions for cost sharing if the total cost sharing does not exceed 200 percent of the annual premium, and no copayment exceeds 50 percent of the cost of a covered service.

(4) "Basic health care services" means the services defined in subdivision (b) of Section 1345 of the Health and Safety Code, or those benefits and provisions as may be required of employers in this state by the enactment of Assembly Bill 350 of the 1989–90 Regular Session, or all of the following benefits:

(A) Inpatient and outpatient hospital services, including inpatient care for a period of at least 120 days of confinement in each calendar year and ancillary services.

(B) Inpatient and outpatient physician services.

(C) Diagnostic and screening tests.

(5) "Dependent" means any person who qualifies as a dependent of the eligible individual for purposes of a health care service plan certified to qualify for the credit allowed under this section

(6) "Supplemental benefits" means:

(A) Prenatal and well-baby care which meets guidelines established by the American Academy of Pediatrics.

(B) Mental health benefits consisting of at least:

(i) Inpatient hospital care for a mental disorder for not less than 45 days per year.

(ii) Outpatient psychotherapy and counseling for a mental disorder for not less than 20 visits per year.

(i) An eligible employer shall be entitled to an additional five dollar ($5) tax credit per month per covered employee for each of the two supplemental benefits.

(j) The Department of Corporations shall forward to the Franchise Tax Board at least annually, or more frequently upon request, a list of all health care services plans licensed under Section 1353 of the Health and Safety Code which are required to provide the basic health care services defined in subdivision (b) of Section 1345 of the Health and Safety Code. The Department of Insurance shall forward to the Franchise Tax Board at least annually, or more frequently upon request, a list of all insurers authorized to transact disability insurance in this state and nonprofit hospital service plan corporations holding the certificate of authority required by Section 11504 of the Insurance Code.

(k) To be eligible for the credit under this section, each disability insurance policy, health care service plan contract, or nonprofit hospital service plan contract shall be certified as providing the basic health care services described in paragraph (4) of subdivision (h), and, if applicable, either or both of the supplemental benefits of

paragraph (6) of subdivision (h), by legal opinion of the plan's counsel, a copy of which shall be provided to each eligible employer to be retained for submission to the Franchise Tax Board upon request.

(*l*) Subdivisions (a) to (k), inclusive, shall become operative on the date that the Tucker Health Insurance Act of 1989 becomes operative.

SEC. 6.1. Section 17057.5 of the Revenue and Taxation Code, as added by Chapter 166 of the Statutes of 1990, is amended to read:

17057.5. It is the intent of the Legislature that the amount of the state low-income housing tax credit allocated to a project pursuant to Section 17058 shall not exceed an amount in addition to the federal tax credit that is necessary for the financial feasibility of the project and its viability throughout the extended use period.

SEC. 6.3. Section 17058 of the Revenue and Taxation Code, as amended by Chapter 166 of the Statutes of 1990, is amended to read:

17058. (a) (1) There shall be allowed as a credit against the amount of net tax (as defined in Section 17039) a state low-income housing credit in an amount equal to the amount determined in subdivision (c), computed in accordance with the provisions of Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) "Taxpayer" for purposes of this section means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor" for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the Mortgage Bond and Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The Mortgage Bond and Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The Mortgage Bond and Tax Credit Allocation

Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the Mortgage Bond and Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to subparagraph (C) of paragraph (5) of subsection (d) of Section 42 of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building which is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building which satisfies

all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Preservation Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the three calendar years after the year of application to the Mortgage Bond and Tax Credit Allocation Committee.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period; or

(B) The amount of the cash flow from those units in the building that are not low-income units. For purposes of computing cash flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may be accumulated and distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four taxable years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the taxable year in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable to this section.

(g) Notwithstanding subdivision (m), the aggregate housing credit dollar amount which may be allocated annually by the Mortgage Bond and Tax Credit Allocation Committee pursuant to this section and Section 23610.5 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars ($35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the Mortgage Bond and Tax Credit Allocation Committee and the allocation recipient.

(h) (1) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 18 years of the compliance period, a qualified

low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the housing sponsor designates the net available units as low-income units subject to the set-aside and rent requirements, up to the number of low-income units necessary to arrive at the original applicable fraction, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced, except to the extent the excess was used for the rehabilitation of the project.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the Mortgage Bond and Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, providing the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with

advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.

(7) A requirement that the housing sponsor notify the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(8) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(9) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of not less than three periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations or other similar events prevent the use of three allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code

(3) Notwithstanding subsection (m) of Section 42 of the Internal Revenue Code, the Mortgage Bond and Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed

with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, for the low-income units, and a development fee that does not exceed a specified percentage of the qualified basis of the project prior to inclusion of the development fee in the qualified basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; or

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which the greatest percentage of total square feet of all residential units is comprised of low-income units with three or more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available

to residents of low-income housing projects.

(vi) Projects located within a "difficult to develop area" or a "qualified census tract" as defined in Section 42(d) (5) (C) of the Internal Revenue Code.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section and Section 23610.5 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the credit allowed under this section exceeds the net tax, the excess credit may be carried over to reduce the net tax in the following year, and succeeding taxable years, if necessary, until the credit has been exhausted.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 23610.5 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total amount of credits authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

The aggregate amount of credit granted pursuant to this section and Section 23610.5 in 1989 may exceed thirty-five million dollars ($35,000,000) by an amount equal to the unallocated credit from 1987 and 1988.

(n) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of 1990 a state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(o) The credit period with respect to an allocation of credit in 1989 by the Mortgage Bond and Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or

1988 shall not begin until after December 31, 1989.

(p) (1) This section shall remain in effect only until December 1, 1990, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

(2) Notwithstanding paragraph (1), this section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code pertaining to low-income housing credits remains in effect.

SEC. 6.5. Section 17062 of the Revenue and Taxation Code, as amended by Chapter 452 of the Statutes of 1990, is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to 7 percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing

with Section 17951).

(4) (A) If there was a deferral of preference tax under former Section 17064.8 for any taxable year beginning before January 1, 1987, and the amount of the deferred tax has not been paid for any taxable year beginning before January 1, 1987, the amount of the net operating loss carryovers which may be carried to taxable years beginning after December 31, 1986, for purposes of this chapter, shall be reduced by the amount of the tax preferences attributable to the deferred tax which has not been paid.

(B) In the case of a net operating loss allowed to be carried forward under subdivision (d) of Section 17276, subparagraph (A) shall apply to the extent that such a loss would have resulted in a deferred tax under prior law.

(5) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not be applicable.

(6) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not be applicable.

(7) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

SEC. 7. Section 17551 of the Revenue and Taxation Code is amended to read:

17551. (a) Accounting periods and methods of accounting shall be determined in accordance with Subchapter E of Chapter 1 of Subtitle A of the Internal Revenue Code, except as otherwise provided in this chapter.

(b) For taxable years beginning on or after January 1, 1987, Section 444 of the Internal Revenue Code, relating to election of taxable years other than required taxable years, shall be applicable, except that Section 444(c)(1), relating to effect of election, shall not apply.

SEC. 8. Section 18001 of the Revenue and Taxation Code is amended to read:

18001. (a) Subject to the following conditions, residents shall be allowed a credit against the "net tax" (as defined by Section 17039) for net income taxes imposed by and paid to another state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income taxable under this part:

(1) The credit shall be allowed only for taxes paid to the other state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income derived from sources within that state which is taxable under its laws irrespective of the residence or domicile of the recipient.

This paragraph shall not apply to residents to whom subdivision (b) of Section 17014 applies.

(2) The credit shall not be allowed if the other state allows

residents of this state a credit against the taxes imposed by that state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) for "net tax" (as defined by Section 17039) paid or payable under this part.

(3) The credit shall not exceed such proportion of the "net tax" (as defined by Section 17039) payable under this part as the income subject to tax in the other state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) and also taxable under this part bears to the taxpayer's entire income upon which the "net tax" (as defined by Section 17039) is imposed by this part.

(4) No credit shall be allowed under this section for any tax imposed by Section 17062.

(b) For purposes of this section, the amount of "net income taxes" paid to another state shall include the taxpayer's pro rata share of any taxes on, or according to, or measured by, income or profits paid or accrued, which were paid by an S corporation, as provided by Section 18006.

SEC. 9. Section 18002 of the Revenue and Taxation Code is amended to read:

18002. (a) Subject to the following conditions, nonresidents shall be allowed a credit against the "net tax" (as defined by Section 17039) for net income taxes imposed by and paid to the state of residence (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income taxable under this part:

(1) The credit shall be allowed only if the state of residence either does not tax income of residents of this state derived from sources within that state or allows residents of this state a credit against the taxes imposed by that state on such income for "net tax" (as defined by Section 17039) paid or payable thereon under this part.

(2) The credit shall not be allowed for taxes paid to a state which allows its residents a credit against the taxes imposed by that state for "net tax" (as defined by Section 17039) paid or payable under this part irrespective of whether its residents are allowed a credit against the taxes imposed by this part for income taxes paid to that state.

(3) Credit shall be allowed only for such proportion of the taxes paid to the state of residence (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) as the income taxable under this part and also subject to tax in the state of residence bears to the entire income upon which the taxes paid to the state of residence are imposed.

(4) The credit shall not exceed such proportion of the "net tax" (as defined by Section 17039) payable under this part as the income subject to tax in the state of residence and also taxable under this part bears to the entire income taxable under this part

(5) No credit shall be allowed under this section for any tax imposed by Section 17062.

(b) For purposes of this section, the amount of "net income taxes"

paid to another state shall include the taxpayer's pro rata share of any taxes on, or according to, or measured by, income or profits paid or accrued, which were paid by an S corporation, as provided by Section 18006.

SEC. 10. Section 18006 of the Revenue and Taxation Code is amended to read:

18006. For purposes of determining a credit under Section 18001 (relating to residents) or Section 18002 (relating to nonresidents), both of the following apply:

(a) A member of a partnership shall be allowed to treat his, her, or its pro rata share of net income taxes paid to another state by the partnership as if those taxes had been paid directly by the partner.

(b) (1) A shareholder of a corporation electing to be treated as an S corporation under Chapter 4.5 (commencing with Section 23800) of Part 11 shall be allowed to treat his or her pro rata share of net income taxes paid to another state by the S corporation as if those taxes had been paid by the shareholder.

(2) This subdivision shall apply only when the state imposing the tax does not allow corporations to elect to be treated as an S corporation.

SEC. 11. Section 18035.5 of the Revenue and Taxation Code is amended to read:

18035.5. (a) If a qualified housing project is sold or disposed of by the taxpayer in an approved disposition, then, at the election of the taxpayer, gain from that approved disposition shall not be recognized to the extent specified in subdivision (c). An election made under this section shall be made at the time and in the manner specified by the Franchise Tax Board in forms and instructions

(b) For purposes of this section.

(1) "Qualified housing project" means a project providing rental or cooperative housing for lower income families subject to any of the following with respect to which the owner is, under those sections or regulations issued thereunder limited as to the rate of return on his or her investment in the project, and limited as to rentals or occupancy charges for units in the project:

(A) A mortgage insured by the United States Department of Housing and Urban Development under either Section 202, 213, 221(d)(3), 231, 236, or 608 of the National Housing Act.

(B) A mortgage securing a direct loan from the Farmers Home Administration of the United States Department of Agriculture under either Section 514 or 515 of the Housing Act of 1949.

(C) A Housing Assistance Payments contract under Section 8 of the United States Housing Act of 1937, where that contract provides a project-based subsidy under the New Construction, Moderate Rehabilitation, Substantial Rehabilitation, or Loan Management programs.

(2) "Approved disposition" means a sale or other disposition of a qualified housing project to a qualified entity as defined in this subdivision and subject to specific use restrictions, as defined in this

subdivision.

(3) "Qualified entities" include any of the following:

(A) A nonprofit corporation that has obtained tax-exempt status under either Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

(B) A public agency or unit of state or local government.

(C) A limited equity cooperative formed pursuant to Section 33007.5 of the Health and Safety Code.

(D) A limited partnership, of which a general partner is one of the above qualified entities, or an affiliate thereof, where a majority of the board of directors of the affiliate is appointed or removable by the qualified entity or where the qualified entity owns a majority of the voting shares of the affiliate, so long as the partnership agreement limits the annual rate of return to investors to 8 percent of their capital contributions.

(4) A qualified entity acquiring a qualified housing project shall agree for the useful life of the project to all of the following conditions and restrictions:

(A) To assume the obligations imposed by any loan agreement, mortgage, subsidy contract, or regulatory agreement on the project.

(B) To restrict occupancy in accordance with the threshold requirements of Section 42(g) of the Internal Revenue Code where less than all of the units in the projects are occupied by tenants whose incomes make the project eligible for the tax credit under Section 42 of the Internal Revenue Code.

(C) To accept all available rent subsidies on behalf of tenants in the project.

(D) Not to evict tenants without a showing of good cause.

(E) Not to arbitrarily discriminate against applicants for admission on the basis of family income or any other basis prohibited by law.

(F) To establish rents for the project not exceeding those required by the terms of any subsidy program utilized at the project or the rent restrictions required by Section 42 of the Internal Revenue Code, whichever is less.

(G) To be subject to continued regulation by federal or state housing agencies or the Department of Housing and Community Development to ensure compliance with these regulatory requirements.

(H) To restrict occupancy in accordance with this paragraph by a deed restriction running with the land and enforceable by the Department of Housing and Community Development. Any regulatory agreement establishing these occupancy restrictions shall be deemed a contract and shall be enforceable by affected tenants as third-party beneficiaries thereto

(c) (1) Where all units in the project are used in accordance with the standards specified in paragraph (4) of subdivision (b), and all of the units are occupied by tenants whose incomes make the project eligible for the tax credit under Section 42 of the Internal Revenue

Code, then 50 percent of the gain, which would otherwise be recognized, shall not be recognizable to any extent.

(2) So long as the threshold requirements of Section 42(g) of the Internal Revenue Code are met, where less than all of the units in the project are occupied by tenants whose incomes make the project eligible for the tax credit under Section 42 of the Internal Revenue Code, then the gain shall not be recognized in accordance with the formulas for allocating the low-income housing tax credit, as provided in Section 42 of the Internal Revenue Code.

(d) Upon the receipt of information that a qualified entity is failing to use the project in accordance with the requirements of paragraph (4) of subdivision (b), then the Department of Housing and Community Development shall conduct an investigation of the allegations. If the department determines that the qualified entity is utilizing good faith efforts to use the units in the project to the maximum extent possible in accordance with the restrictions specified in paragraph (4) of subdivision (b), and it is not economically feasible to utilize all units in that fashion, then the department shall not seek to remedy the alleged violation. If the department determines that there exists an unjustified violation of the restrictions specified in paragraph (4) of subdivision (b), then the department shall pursue whatever remedies are specified by law for that violation, including the imposition of a receivership to operate the project in accordance with the requirements of this section and recovery of a penalty from the qualified entity in the amount of tax that would have been imposed upon the capital gain that was not recognized and penalties and interest for delinquent taxes as otherwise provided by law.

(e) No project on which 50 percent of the capital gains has been nonrecognized pursuant to subdivision (c) shall be sold or otherwise disposed of without the prior written approval of the Department of Housing and Community Development. In giving that approval, the department shall ensure that the project shall continue to be subject to the requirements of paragraph (2) of subdivision (b) or that any net proceeds of the sale are utilized for charitable low-income housing purposes. In determining what constitutes the net proceeds of the sale, where the seller is a qualified limited partnership entity under subparagraph (D) of paragraph (3) of subdivision (b), the Department of Housing and Community Development shall consider the terms of the partnership agreement.

(f) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends that date.

SEC. 12. Section 18470 of the Revenue and Taxation Code is amended to read:

18470. (a) If an individual serving in the Armed Forces of the United States, or serving in support of such armed forces, is continuously outside the Americas for longer than 90 days, that period of time and the next 90 days thereafter shall be disregarded

in determining under this part the amount of any credit or refund (including interest) or in respect of any liability for taxes, interests or penalties of that individual whether any of the following acts were performed within the time prescribed:

(1) Filing any return of income tax (except income tax withheld at source);

(2) Payment of any income tax (except income tax withheld at source);

(3) Filing an appeal with the State Board of Equalization;

(4) Allowance of a credit or refund of any tax;

(5) Filing a claim for credit or refund of any tax;

(6) Bringing a suit upon any such claim for credit or refund;

(7) Assessment of any tax;

(8) Giving or making any notice or demand, for the payment of any tax, or with respect to any liability in respect of any tax;

(9) Collection, by the Franchise Tax Board or the collector, by distraint or otherwise, of the amount of any liability in respect of any tax;

(10) Bringing suit by the State of California, or any officer on its behalf, in respect of any liability in respect of any tax; and

(11) Any other act required or permitted under this part.

(b) This section shall apply to the spouse of any individual entitled to the benefits of subdivision (a).

SEC. 13. Section 18515.2 of the Revenue and Taxation Code, as amended by Chapter 102 of the Statutes of 1990, is amended to read:

18515.2. Notwithstanding Section 13340 of the Government Code, all money transferred to the Vietnam Veterans Memorial Account in the General Fund pursuant to Section 18515.1 is hereby continuously appropriated, without regard to fiscal years, for allocation as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the Vietnam Veterans Memorial Commission established pursuant to Section 1300 of the Military and Veterans Code for use in the construction of a suitable memorial to Vietnam veterans at the State Capitol, including the amount of fifty thousand dollars ($50,000) for purposes of the recordation of additional names upon, and the repair of, the memorial. Any modifications or alterations of, or additions to, the Vietnam Veterans Memorial shall be performed in accordance with criteria established by the Vietnam Veterans Memorial Commission.

(c) If moneys in the account exceed the amount required to construct, improve, maintain, or repair a Vietnam Veterans Memorial, the balance shall be allocated by the Vietnam Veterans Memorial Commission to be used for the construction, improvement, or repair of other veterans' memorials as designated by that commission.

(d) Any moneys allocated to the Veterans Memorial Commission

pursuant to subdivision (c) may be deposited by that commission in a trust account in a private financial institution.

(e) Those moneys identified in subdivision (b) for the purpose of funding the recordation of additional names upon, and the repair of, the Vietnam Veterans Memorial may be deposited in a separate special account to be disbursed as required by the Director of Veterans Affairs.

SEC. 14. Section 18515.2 of the Revenue and Taxation Code, as amended by Chapter 102 of the Statutes of 1990, is amended to read:

18515.2. Notwithstanding Section 13340 of the Government Code, all money transferred to the Vietnam Veterans Memorial Account in the General Fund pursuant to Section 18515.1 is hereby continuously appropriated, without regard to fiscal years, for allocation as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) (1) To the Vietnam Veterans Memorial Commission established pursuant to Section 1300 of the Military and Veterans Code for use in the construction, maintenance, and operation of a suitable memorial to Vietnam veterans at the State Capitol, including the amount of fifty thousand dollars ($50,000) for purposes of the recordation of additional names upon, and the repair of, the memorial. Any modifications or alterations of, or additions to, the Vietnam Veterans Memorial shall be performed in accordance with criteria established by the Vietnam Veterans Memorial Commission.

(2) For purposes of this subdivision, "operation" includes, but is not limited to, developing and publishing informational brochures for the memorial, producing an informational film about the memorial, and conducting tours of the memorial.

(c) If moneys in the account exceed the amount required to construct, improve, maintain, or repair a Vietnam Veterans Memorial, the balance shall be allocated by the Vietnam Veterans Memorial Commission to be used for the construction, improvement, or repair of other veterans' memorials as designated by that commission.

(d) Any moneys allocated to the Veterans Memorial Commission pursuant to subdivision (c) may be deposited by that commission in a trust account in a private financial institution.

(e) Those moneys identified in subdivision (b) for the purpose of funding the recordation of additional names upon, and the repair of, the Vietnam Veterans Memorial may be deposited in a separate special account to be disbursed as required by the Director of Veterans Affairs.

SEC. 15. Section 18802.2 of the Revenue and Taxation Code is amended to read:

18802.2. Every individual, partnership, corporation, joint stock company or association, insurance company, business trust, or so-called Massachusetts trust, shall be required to file a return for

certain payments of remuneration for services and furnish written statements to the person whose name is required to be set forth on the return in accordance with the provisions of Section 6041A of the Internal Revenue Code, except that no return or statement shall be required if a statement with respect to the services is required to be furnished under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code (relating to withholding tax on wages) or Section 18802.5, and no return or statement shall be required with respect to direct sales pursuant to Section 6041A(b) of the Internal Revenue Code.

SEC. 16. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Chapter 20 (commencing with Section 25661), Chapter 21 (commencing with Section 25901), Chapter 23 (commencing with Section 26131), and Chapter 24 (commencing with Section 26422), and for purposes of Sections 25401, 25551, and 25555, "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 26131.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit

allowed by Section 23453—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) Credits for taxes withheld under Section 26131.

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

SEC. 16.5. Section 23455 of the Revenue and Taxation Code is amended to read:

23455. For purposes of this part, Section 55 of the Internal Revenue Code is modified as follows:

(a) Section 55(b)(1) of the Internal Revenue Code, relating to tentative minimum tax, is modified by requiring the tentative minimum tax for the taxable year to be imposed as follows:

(1) With respect to corporations subject to tax under Chapter 2 (commencing with Section 23101), other than financial corporations, according to or measured by net income, for the privilege of doing business within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(2) With respect to corporations subject to tax under Chapter 3 (commencing with Section 23501), on net income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(3) With respect to corporations subject to tax under Article 2 of Chapter 4 (commencing with Section 23731), on the unrelated business income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative taxable income for the taxable year as exceeds the exemption amount.

(4) With respect to banks subject to tax under Section 23181,

according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount, and

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(5) With respect to financial corporations subject to tax under Section 23183, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount, and

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year. The offset prescribed by Section 23184 shall be applied to the tentative minimum tax in the same manner and to the same extent as that offset is applied to the tax imposed under Chapter 2 (commencing with Section 23101).

(b) Section 55(b)(2) of the Internal Revenue Code, relating to the definition of alternative taxable income, is modified as follows:

(1) For corporations whose net income is determined under Chapter 17 (commencing with Section 25101), alternative minimum taxable income shall be allocated and apportioned in the same manner as net income is allocated and apportioned for purposes of the regular tax.

(2) With respect to taxpayers subject to Article 4 (commencing with Section 23221) of Chapter 2, Articles 4 (commencing with Section 23221) to 9 (commencing with Section 23361), inclusive, shall apply to the tax imposed by this section except that Section 23221 shall not apply.

(3) For purposes of computing the alternative minimum tax for taxable years in which a taxpayer commenced doing business, dissolves, withdraws, or ceases doing business, Sections 23151, 23151.1, 23151.2, 23181, 23183, 23183.1, 23183.2, 23201 to 23204, inclusive, 23222 to 23224.5, inclusive, 23282, 23332.5, 23504, and 25401 shall be applied with due regard for the rate and alternative minimum taxable income prescribed by this chapter

(c) Section 55(c) of the Internal Revenue Code, relating to the definition of regular tax, is modified to read:

(1) For purposes of this chapter, the term "regular tax" means the amount of tax imposed under Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) or Article 2 (commencing with Section 23731) of Chapter 4, but does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(2) The tax specified in paragraph (1) shall be the amount determined prior to reduction by any credits against the tax.

SEC. 17. Section 23459 of the Revenue and Taxation Code is amended to read:

23459. For purposes of this part, the provisions of Section 59 of the Internal Revenue Code are modified as follows:

(a) Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not be applicable.

(b) Section 59(b)(2) of the Internal Revenue Code, relating to income eligible for the credit under Section 936 of the Internal Revenue Code, shall not be applicable.

(c) Subparagraphs (A), (B), and (C) of Section 59(e)(2) of the Internal Revenue Code, relating to qualified expenditures, are modified to refer to:

(1) Section 24364, in lieu of the deduction under Section 173 of the Internal Revenue Code.

(2) Section 24365, in lieu of the deduction under Section 174(a) of the Internal Revenue Code.

(3) Section 24423, in lieu of the deduction under Section 263(c) of the Internal Revenue Code.

SEC. 18. Section 23601.5 of the Revenue and Taxation Code is amended to read:

23601.5. (a) For income years beginning on or after January 1, 1990, and before January 1, 1994, there shall be allowed as a credit against the "tax" (as defined by Section 23036), an amount equal to 10 percent of the cost of a solar energy system installed on premises, used for commercial purposes, which are located in California and which are owned by the taxpayer during the income year. For purposes of taxpayers who lease a solar energy system pursuant to subdivision (i), the tax credit shall apply only to the principal recovery portion of lease payments, as defined in subdivision (k), for the term of the lease not to exceed 10 years, which are made during the income year, and to the amounts expended on the purchased portion of the solar energy system, including installation charges, during the income year.

(b) (1) The solar energy tax credit shall be claimed on the state income tax return for the income year in which the solar energy system was installed.

(2) The solar energy tax credit may not be claimed for any solar energy system with a generating capacity in excess of 30 megawatts for any income year, or portion thereof, for which the Internal Revenue Code does not allow at least a 10-percent tax credit for solar energy systems with a generating capacity in excess of 30 megawatts which is equivalent in scope to the credit available under the Internal Revenue Code for the 1989 calendar year.

(c) A taxpayer who claimed the solar energy tax credit on the state income tax return for the income year in which the solar energy system was installed may claim the credit in subsequent years for additions to the system or additional systems by the amount

prescribed in subdivision (a).

(d) For purposes of computing the credit provided by this section, the cost of any solar energy system eligible for the credit provided by this section shall be reduced by any grant provided by a public entity for that system.

(e) The basis of any system for which a credit is allowed shall be reduced by the amount of the credit and the amount of any grant provided by a utility or public agency for the solar energy system. The basis adjustment shall be made for the income year for which the credit is allowed.

(f) If there is more than one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to its ownership interests in the premises. In the case of a partnership, the solar energy tax credit may be divided between the partners pursuant to a written partnership agreement.

(g) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

(h) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the current or any prior income year as energy conservation measures under this part.

(i) Taxpayers who lease a solar energy system installed on premises in California shall receive a tax credit as provided in subdivision (a), if the lessee can confirm, if necessary, by a written document signed by the lessor that (1) the lessor irrevocably elects not to claim a state tax credit for the solar energy system, and (2) if the system is installed in a locality served by a municipal solar utility, that the lessor holds a valid permit from the municipal solar utility. Leasing requirements may be established by the State Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(j) The State Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. These guidelines and criteria shall include, but are not limited to, minimum requirements for safety, cost-effectiveness, in terms of dollars per kilowatt, market readiness, reliability, and durability of solar energy systems.

Any solar energy system with a generating capacity in excess of 10 megawatts may qualify for the credit only if the owner of the solar energy system first obtains a finding from the commission that the system is eligible for the credit under the guidelines and criteria established pursuant to this subdivision Any solar energy system certified by the commission pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code shall be deemed eligible for the credit.

The Franchise Tax Board shall prescribe those regulations as may be necessary to carry out the purposes of this section.

(k) For purposes of this section, the following definitions shall apply:

(1) "Installed" means placed in a functionally operative state.

(2) "Cost" includes equipment, installation charges, and compensation paid to the owner of burdened property in connection with the acquisition of a solar easement, as defined in Section 801.5 of the Civil Code, and the fees for the recording of the easement. In the case of a system which is leased, "cost" means the principal recovery portion of lease payments, which is the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest charges and maintenance expenses.

"Cost" does not include interest charges and costs associated with the acquisition of an easement other than a solar easement.

"Cost" includes all components to carry out the intended use of the system if they are an integral part of the system.

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease or easement granting use of the premises, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises, a person who is a member of a nonprofit corporation or association which is a duly recorded holder of legal title, or a person who is a member of a nonprofit corporation or association which is a lessee with at least three years remaining on its lease.

(4) "Premises" means the principal stationary location in California where the system is installed for direct use or for purposes of sale of energy, and includes land, easements, and buildings or portions thereof.

(5) "Commercial purposes" means the installation of solar energy systems on premises other than single-family dwellings.

(6) "Single-family dwelling" means single-family residences, mobilehomes, and the individual units of condominiums.

"Single-family dwelling" does not include cooperatives, apartment buildings, or other similar multiple dwellings, including buildings and any other common areas of a condominium maintained by a homeowners' association.

(7) (A) "Solar energy system" means the use of solar devices designed or intended for the individual function of production of electricity in excess of 30 watts per device.

"Solar energy system" includes, but is not limited to, solar thermal electric systems and photovoltaic systems.

For purposes of this section, "solar energy system" does not include solar devices for the individual function of wind energy for the production of electricity or mechanical work.

(B) Eligible solar energy systems shall have a useful life of not less than five years

(8) "Solar device" means the equipment associated with the collection, conversion, transfer, distribution, storage, or control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(9) "Municipal solar utility" means a city, county, or municipal utility district, or agency thereof, which sells or leases solar or other energy generating equipment or energy saving devices for residential, commercial, agricultural, or industrial uses or which issues permits to companies engaged in the leasing of this equipment.

(*l*) Except for purposes of subdivision (g) of Section 23601.4, the provisions of this section shall not apply to any solar energy system which continues to qualify for the tax credit authorized by former Section 23601 (as amended by Chapter 1200 of the Statutes of 1986) by meeting the eligibility requirements of subdivision (j) of that section.

(m) This section shall remain in effect only until December 1, 1994, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (g), until the credit has been exhausted.

SEC. 18.5. Section 23601.5 of the Revenue and Taxation Code is amended to read:

23601.5. (a) For income years beginning on or after January 1, 1990, and before January 1, 1994, there shall be allowed as a credit against the "tax" (as defined by Section 23036), an amount equal to 10 percent of the cost of a solar energy system installed on premises, used for commercial purposes, which are located in California and which are owned by the taxpayer during the income year. For purposes of taxpayers who lease a solar energy system pursuant to subdivision (i), the tax credit shall apply only to the principal recovery portion of lease payments, as defined in subdivision (k), for the term of the lease not to exceed 10 years, which are made during the income year, and to the amounts expended on the purchased portion of the solar energy system, including installation charges, during the income year.

(b) The solar energy tax credit shall be claimed on the state income tax return for the income year in which the solar energy system was installed.

(c) A taxpayer who claimed the solar energy tax credit on the state income tax return for the income year in which the solar energy system was installed may claim the credit in subsequent years for additions to the system or additional systems by the amount prescribed in subdivision (a).

(d) For purposes of computing the credit provided by this section, the cost of any solar energy system eligible for the credit provided by this section shall be reduced by any grant provided by a public entity for that system.

(e) The basis of any system for which a credit is allowed shall be

reduced by the amount of the credit and the amount of any grant provided by a utility or public agency for the solar energy system. The basis adjustment shall be made for the income year for which the credit is allowed.

(f) If there is more than one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to its ownership interests in the premises. In the case of a partnership, the solar energy tax credit may be divided between the partners pursuant to a written partnership agreement.

(g) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

(h) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the current or any prior income year as energy conservation measures under this part.

(i) Taxpayers who lease a solar energy system installed on premises in California shall receive a tax credit as provided in subdivision (a), if the lessee can confirm, if necessary, by a written document signed by the lessor that (1) the lessor irrevocably elects not to claim a state tax credit for the solar energy system, and (2) if the system is installed in a locality served by a municipal solar utility, that the lessor holds a valid permit from the municipal solar utility. Leasing requirements may be established by the State Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(j) The State Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. These guidelines and criteria shall include, but are not limited to, minimum requirements for safety, cost-effectiveness, in terms of dollars per kilowatt, market readiness, reliability, and durability of solar energy systems.

(1) The commission may grant an exemption from any of the guidelines and criteria if the commission finds that the project, when evaluated in its entirety and based on particular circumstances, meets the intent of Chapter 1291 of the Statutes of 1989.

(2) Any solar energy system with a generating capacity in excess of 10 megawatts may qualify for the credit only if the owner of the solar energy system first obtains a finding from the commission that the system is eligible for the credit under the guidelines and criteria established pursuant to this subdivision. Any solar energy system certified by the commission pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code shall be deemed eligible for the credit.

(3) As specified in the guidelines and criteria established by the commission, any solar energy system with a generating capacity in

excess of one megawatt and less than or equal to 10 megawatts may qualify for the credit only if the owner of the solar energy system first obtains a finding from the commission that the system is eligible for the credit under the guidelines and criteria established pursuant to this subdivision.

(4) The Franchise Tax Board shall prescribe those regulations as may be necessary to carry out the purposes of this section.

(k) For purposes of this section, the following definitions shall apply:

(1) "Installed" means placed in a functionally operative state.

(2) "Cost" includes equipment, installation charges, and compensation paid to the owner of burdened property in connection with the acquisition of a solar easement, as defined in Section 801.5 of the Civil Code, and the fees for the recording of the easement. In the case of a system which is leased, "cost" means the principal recovery portion of lease payments, which is the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest charges and maintenance expenses.

"Cost" does not include interest charges and costs associated with the acquisition of an easement other than a solar easement.

"Cost" includes all components to carry out the intended use of the system if they are an integral part of the system.

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease or easement granting use of the premises, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises, a person who is a member of a nonprofit corporation or association which is a duly recorded holder of legal title, or a person who is a member of a nonprofit corporation or association which is a lessee with at least three years remaining on its lease.

(4) "Premises" means the principal stationary location in California where the solar energy system is installed for direct use or for purposes of sale of energy, and includes land, easements, and buildings or portions thereof.

(5) "Commercial purposes" means the installation of solar energy systems on premises other than single-family dwellings.

(6) "Single-family dwelling" means single-family residences, mobilehomes, and the individual units of condominiums.

"Single-family dwelling" does not include cooperatives, apartment buildings, or other similar multiple dwellings, including buildings and any other common areas of a condominium maintained by a homeowners' association.

(7) (A) "Solar energy system" means the use of solar devices designed or intended for the individual function of production of electricity in excess of 30 watts per device.

"Solar energy system" includes, but is not limited to, solar thermal electric systems and photovoltaic systems.

For purposes of this section, "solar energy system" does not include solar devices for the individual function of wind energy for the production of electricity or mechanical work.

(B) Eligible solar energy systems shall have a useful life of not less than five years.

(8) "Solar device" means the equipment associated with the collection, conversion, transfer, distribution, storage, or control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(9) "Municipal solar utility" means a city, county, or municipal utility district, or agency thereof, which sells or leases solar or other energy generating equipment or energy saving devices for residential, commercial, agricultural, or industrial uses or which issues permits to companies engaged in the leasing of this equipment.

(*l*) Except for purposes of subdivision (g) of Section 23601.4, the provisions of this section shall not apply to any solar energy system which continues to qualify for the tax credit authorized by former Section 23601 (as amended by Chapter 1200 of the Statutes of 1986) by meeting the eligibility requirements of subdivision (j) of that section.

(m) This section shall remain in effect only until December 1, 1994, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (g), until the credit has been exhausted.

SEC. 19. Section 23605 of the Revenue and Taxation Code is amended to read:

23605. (a) For income years beginning on or after January 1, 1989, and before January 1, 1996, there shall be allowed as a credit against the amount of "tax" (as defined in Section 23036) an amount equal to the amount determined in subdivisions (b), (c), and (g).

(b) The amount of the credit allowed by this subdivision shall be as follows:

(1) In the case of an employer with 200 or more employees, the credit shall be 20 percent of the cost paid or incurred by an employer for the purchase of company shuttle buses, company commuter buses or vans, or company motor-pool vehicles which are provided as part of an employer-sponsored ridesharing incentive program for employees conducted principally in this state.

(2) In the case of an employer with less than 200 employees, the credit shall be 30 percent of the cost specified in paragraph (1).

(3) The credit provided in this subdivision shall be claimed in the state return for the income year in which the ridesharing vehicles are purchased and placed in service.

(4) The basis of any ridesharing vehicle purchased for which a credit is allowed shall be reduced by the amount of the credit. The basis adjustment shall be made for the income year for which the credit is allowed.

(5) If a ridesharing vehicle purchased for which a credit is provided in this subdivision is disposed of, or is no longer used as part of an employer-sponsored ridesharing incentive program, within three years of its acquisition, that portion of the credit provided in this subdivision which represents the pro rata share of that remaining three-year period shall be added to the employer's tax liability in the income year of that disposition or nonuse. The basis of the vehicle shall be increased by an amount equal to that amount added to the employer's tax liability.

(c) The amount of the credit allowed by this subdivision shall be as follows:

(1) In the case of an employer with 200 or more employees, the credit shall be 15 percent of the cost paid or incurred by an employer for leasing or contracting company shuttle buses, company commuter buses or vans, or company motor-pool vehicles which are provided as part of an employer-sponsored ridesharing incentive program. This credit shall be based on the total payments to the lessor or vehicle provider during the life of the lease or contract. The lessor or vehicle provider of vehicles specified in this subdivision is not eligible for this credit.

(2) In the case of an employer with less than 200 employees, the credit shall be 30 percent of the cost specified in paragraph (1)

(3) The credit provided in this subdivision shall be claimed in the state income tax return for the income year in which the ridesharing vehicles are leased or contracted for and placed in service. However, with respect to ridesharing vehicles first leased or contracted for prior to the 1989 income year, the credit provided in this subdivision shall be claimed in the state income tax return for the 1989 income year based on the total payments to the lessor or vehicle provider during the 1989 income year and the total payments to be made during the remaining life of the lease or contract.

(4) If a ridesharing vehicle leased or contracted for which a credit is provided in this subdivision is disposed of, or is no longer used as part of an employer-sponsored ridesharing incentive program, prior to the expiration date of the lease or contract, that portion of the credit provided in this subdivision which represents the pro rata share of the remaining life of that lease or contract shall be added to the employer's tax liability in the income year of that disposition or nonuse.

(d) The credits allowed by subdivisions (b) and (c) shall not apply to the cost of purchasing, leasing, or contracting company shuttle buses, company commuter buses or vans, or company motor-pool vehicles which would otherwise be required as part of the employer's business activities in the absence of an employer-sponsored ridesharing incentive program.

(e) If two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the expenses paid or incurred. In the case of a partnership, the tax credit

may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to a partner's distributive share.

(f) The employer shall do all of the following with respect to the credits allowed in subdivisions (b) and (c):

(1) Keep a contemporaneous log of the vehicle's use such that it can be determined that it meets the requirements specified in subdivision (i). The log information shall include, but not be limited to, dates and times the vehicle was driven, the mileage for each trip, and the purpose of the trip.

(2) Retain vehicle documents verifying the vehicle's weight requirements, if applicable, and fuel efficiency standards as specifed in subdivision (i). These documents shall include, but not be limited to, the vehicle's owners manual and the vehicle's registration.

(3) Provide upon the request of the Franchise Tax Board the information specified in paragraphs (1) and (2)

(g) A credit shall be allowed by this subdivision for the cost paid or incurred by employers for providing subsidized public transit passes to employees as follows:

(1) Forty percent of the cost if the employers provide no free or subsidized parking.

(2) Twenty percent of the cost if the employers provide subsidized parking.

(3) Ten percent of the cost if the employers provide free parking

(h) In the case where the credit allowed by this section exceeds the "tax" the excess may be carried over to reduce the "tax" in the following years and succeeding years if necessary, until the credit has been exhausted.

(i) For purposes of this section.

(1) "Employer" means a taxpayer for whom services are performed by employees, except government agencies.

(2) "Employee" means an individual who performs service for an employer for more than 10 hours per week for remuneration.

(3) "Employer-sponsored ridesharing incentive program" means a program undertaken by an employer either alone or in cooperation with other employers to encourage or provide, or both, fiscal or other incentives to employees to make the home-to-work commute trip by any mode other than the single-occupant motor vehicle.

(4) "Company shuttle bus" means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 80 percent of the mileage of which reasonably can be expected to be for any of the following purposes:

(i) Transporting employees on a scheduled-route basis.

(ii) Interfacing with public transportation facilities.

(iii) Transporting employees on a demand-response basis.

(C) Is acquired by the taxpayer on or after the date of the enactment of this section, except as provided in paragraph (3) of subdivision (c).

(D) With respect to which the taxpayer makes an election under this paragraph on its return for the income year in which the vehicle is placed in service.

(E) Is made available to all employees on a nondiscriminatory basis in the normal course of the taxpayer's business.

(5) "Company commuter bus or van" means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 50 percent of the mileage of which can be reasonably expected to be used for the purpose of transporting employees to and from work.

(C) Is acquired by the taxpayer on or after the date of enactment of this section, except as provided in paragraph (3) of subdivision (c).

(D) With respect to which the taxpayer makes an election under this paragraph on its return for the income year in which the vehicle is placed in service.

(E) Is made available to all employees on a nondiscriminatory basis in the normal course of the taxpayer's business.

(6) "Company motor-pool vehicle" means a highway vehicle which meets all of the following criteria:

(A) Is an automobile with a gross vehicle weight of 6,000 pounds or less.

(B) Meets or exceeds certain fuel efficiency standards pursuant to the provisions of Title II of Public Law 95-618.

(C) Is made available to all employees on a nondiscriminatory basis during the course of the taxpayer's business, and at least 50 percent of its mileage during the taxable year can reasonably be expected to be used for the purpose of providing transportation to employees.

(D) Is acquired by the taxpayer on or after the date of the enactment of this section, except as provided in paragraph (3) of subdivision (c).

(E) With respect to which the taxpayer makes an election under this paragraph on its return for the income year in which the vehicle is placed in service.

(7) "Subsidized parking" means any parking provided to employees at the worksite of the employee receiving the transit pass that is not charged at its fair market value, represented by the prevailing price charged for similar parking within a half-mile radius of the worksite, as certified by the employer.

(j) The credit provided in this section shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled for costs to which the credit applies.

(k) This section shall remain in effect only until December 1, 1996, and as of that date is repealed. However, any unused credit may

continue to be carried forward, as provided in subdivision (h), until the credit has been exhausted.

SEC. 19.3. Section 23610.4 of the Revenue and Taxation Code, as added by Chapter 166 of the Statutes of 1990, is amended to read:

23610.4. It is the intent of the Legislature that the amount of the state low-income housing tax credit allocated to a project pursuant to Section 23610.5 shall not exceed an amount in addition to the federal tax credit that is necessary for the financial feasibility of the project and its viability throughout the extended use period.

SEC. 19.5. Section 23610.5 of the Revenue and Taxation Code, as amended by Chapter 166 of the Statutes of 1990, is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the "tax" (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the Mortgage Bond and Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The Mortgage Bond and Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The Mortgage Bond and Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the Mortgage Bond and Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to subparagraph (C) of paragraph (5) of subsection (d) of Section 42 of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building which is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building which satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for prepayment under Subtitle 13 of the

Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the three calendar years after the year of application to the Mortgage Bond and Tax Credit Allocation Committee.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four income years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) Notwithstanding subdivision (m), the aggregate housing credit dollar amount which may be allocated annually by the Mortgage Bond and Tax Credit Allocation Committee pursuant to this section and Section 17058 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars ($35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the Mortgage Bond and Tax Credit Allocation Committee and the allocation recipient.

(h) (1) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive income years beginning with the first income year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 18 years of the compliance period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the housing sponsor designates the next

available units as low-income units subject to the set-aside and rent requirements, up to the number of low-income units necessary to arrive at the original applicable fraction, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced, except to the extent the excess was used for the rehabilitation of the project.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

(1) The requirements of this section shall be set forth in a regulatory agreement between the Mortgage Bond and Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.

(G) A requirement that the housing sponsor notify the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is

not in compliance with Section 42(g) of the Internal Revenue Code.

(H) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(I) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of not less than three periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of three allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code.

(3) Notwithstanding subsection (m) of Section 42 of the Internal Revenue Code, the Mortgage Bond and Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a) of Section 17058, shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit

proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, for the low-income units, and a development fee that does not exceed a specified percentage of the qualified basis of the project prior to inclusion of the development fee in the qualified basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; or

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which the greatest percentage of total square feet of all residential units is comprised of low-income units with three or more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(vi) Projects located within a "difficult to develop area" or a "qualified census tract" as defined in Section 42(d) (5) (C) of the Internal Revenue Code.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the

date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 17058 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total amount of credits authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

The aggregate amount of credit granted pursuant to this section and Section 17058 in 1989 may exceed thirty-five million dollars ($35,000,000) by an amount equal to the unallocated credit from 1987 and 1988.

(n) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(o) The credit period with respect to an allocation of credit in 1989 by the Mortgage Bond and Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(p) (1) This section shall remain in effect only until December 1, 1990, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

(2) Notwithstanding paragraph (1), this section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, pertaining to low-income housing credits, remains in effect.

SEC. 20. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For income years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any income year shall not exceed six hundred dollars ($600) for contributions to a full-time qualified care plan or a part-time qualified care plan made on behalf of the employee's dependent.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code which is a specialized center with respect to short-term illnesses of an employee's dependents, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Specialized center" means a facility which provides care to mildly ill children and which may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross infection.

(3) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(5) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(6) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the income year for which the credit is allowed.

(k) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to its respective share of the costs paid or incurred.

(*l*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 21. Section 24356.2 of the Revenue and Taxation Code is amended to read:

24356.2. (a) A taxpayer may elect to treat the cost of any Section 24356.2 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the income year in which the Section 24356.2 property is placed in service.

(b) (1) An election under this section for any income year shall—

(A) Specify the items of Section 24356.2 property to which the election applies and the portion of the cost of each of those items which is to be taken into account under subdivision (a), and

(B) Be made on the taxpayer's return of the tax imposed by this part for the income year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(c) (1) For purposes of this section, "Section 24356.2 property" means any recovery property which is Section 38 property under the terms of the Internal Revenue Code and which is acquired by purchase for exclusive use in a trade or business conducted within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying Sections 267(b) and 267(c) of the Internal Revenue Code for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants),

(B) The property is not acquired by one component member of an affiliated group from another component member of the same affiliated group, and

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired.

(3) For purposes of this section, the cost of property does not include so much of the basis of that property as is determined by reference to the basis of other property held at any time by the person acquiring that property.

(4) This section shall not apply to any Section 24356.2 property purchased by any person described in Section 46(e)(3) of the Internal Revenue Code unless the credit under Section 38 of the Internal Revenue Code is allowable with respect to that person for that property (determined without regard to this section).

(5) For purposes of subdivision (b)—

(A) All component members of an affiliated group shall be treated as one taxpayer, and

(B) The taxpayer shall apportion the dollar limitation contained in subdivision (f) among the component members of the affiliated group in whatever manner the board shall by regulations prescribe.

(6) For purposes of paragraphs (2) and (5), "affiliated group" has the meaning assigned to it by Section 1504 of the Internal Revenue

Code, except that, for these purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in Section 1504(a) of the Internal Revenue Code.

(7) For purposes of this section, sound recordings shall be treated as recovery property only if so elected under Section 48(s) of the Internal Revenue Code.

(d) For purposes of this section, "taxpayer" means a taxpayer who conducts a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 24356 with respect to any property which constitutes Section 24356.2 property.

(f) The deduction allowable under subdivision (a) for any income year shall not exceed the following applicable amount for the income year of the designation of an enterprise zone and income years thereafter:

	The applicable amount is:
Income year of designation	$ 5,000
1st income year thereafter	5,000
2nd income year thereafter	7,500
3rd income year thereafter	7,500
Each income year thereafter	10,000

(g) This section shall apply only to property which is used exclusively in a trade or business conducted within an enterprise zone.

(h) Any amounts deducted under subdivision (a) with respect to property which ceases to be used in the trade or business within an enterprise zone at any time before the close of the second income year after the property is placed in service shall be included in income for that year.

SEC. 22. Section 24357.7 of the Revenue and Taxation Code is amended to read:

24357.7. (a) For purposes of paragraph (3) of subdivision (b) of Section 24357.2, the term "qualified conservation contribution" means a contribution—

(1) Of a qualified real property interest,

(2) To a qualified organization,

(3) Exclusively for conservation purposes.

(A) For purposes of this subdivision, the term "qualified real property interest" means any of the following interests in real property:

(i) The entire interest of the donor other than a qualified mineral interest.

(ii) A remainder interest.

(iii) A restriction (granted in perpetuity) on the use which may

be made of the real property.

(b) For purposes of subdivision (a), the term "qualified organization" means an organization which:

(1) Is described in subdivision (a) or (b) of Section 24359, or

(2) Is described in Section 23701(d), and—

(A) Meets the requirements of Section 509(a)(2) of the Internal Revenue Code, or

(B) Meets the requirements of Section 509(a)(3) of the Internal Revenue Code and is controlled by an organization described in paragraph (1) or in subparagraph (A).

(c) For purposes of this section, the term "conservation purpose" means any of the following:

(1) The preservation of land areas for outdoor recreation by, or the education of, the general public.

(2) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem.

(3) The preservation of open space (including farm land and forest land) where such preservation is for any of the following:

(A) For the scenic enjoyment of the general public.

(B) Pursuant to a clearly delineated federal, state, or local governmental conservation policy, and will yield a significant public benefit.

(C) The preservation of an historically important land area or a certified historic structure.

(d) The term "certified structure" means any building, structure, or land area which:

(1) Is listed in the National Register, or

(2) Is located in a registered historic district (as defined in Section 48(g)(3)(B)) of the Internal Revenue Code and is certified by the Secretary of the Interior to the secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the income year in which the transfer is made.

(e) For purposes of this section:

(1) A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(2) (A) Except as provided in subparagraph (B), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, this subdivision shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(B) With respect to any contribution of property in which the ownership of the surface estate and mineral interests were separated before June 13, 1976, and remain so separated, paragraph (1) shall be treated as met if the probability of surface mining occurring on that property is so remote as to be negligible.

(f) For purposes of this section, the term "qualified mineral interest" means—

(1) Subsurface oil, gas, or other minerals; and

(2) The right to access to those minerals.

SEC. 23. Section 24358 of the Revenue and Taxation Code is amended to read:

24358. In the case of a bank or corporation, the total deductions under Section 24357 for any income year shall not exceed 5 percent of the taxpayer's net income computed without regard to any of the following:

(a) Subdivision (e) of Section 23802, relating to a deduction for built-in gains and passive investment income.

(b) Sections 24357 to 24359, inclusive, relating to the deduction for contributions.

(c) Article 2 (commencing with Section 24401) of Chapter 7 (except Sections 24407 to 24409, inclusive, relating to organizational expenses).

SEC. 24. Section 24413.2 of the Revenue and Taxation Code is repealed.

SEC. 25. Section 24413.3 of the Revenue and Taxation Code is repealed.

SEC. 25.5. Section 24422 of the Revenue and Taxation Code is amended to read:

24422. No deduction shall be allowed for—

(a) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This subdivision shall not apply to:

(1) Expenditures for the development of mines or deposits deductible under Section 616 of the Internal Revenue Code.

(2) Soil and water conservation expenditures deductible under Section 24369.

(3) Expenditures for farmers for fertilizer, etc., deductible under Section 24377.

(4) Research and experimental expenditures deductible under Sections 24365 to 24368, inclusive.

(5) Expenditures for which a deduction is allowed under Section 24356.2.

(6) Expenditures for which a deduction is allowed under Section 24356.3.

(b) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

SEC. 26. Section 24422.1 of the Revenue and Taxation Code is repealed.

SEC. 27. Section 24424 of the Revenue and Taxation Code is amended to read:

24424. (a) No deduction shall be allowed for—

(1) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in

any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

(2) Any amount paid or accrued on indebtedness incurred to purchase or carry a single premium life insurance, endowment, or annuity contract. This paragraph shall apply in respect of annuity contracts only as to contracts purchased after December 31, 1954.

(3) Except as provided in subsection (c), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of such contract (either from the insurer or otherwise). This paragraph shall apply only in respect of contracts purchased after August 6, 1963.

(4) Any interest paid or accrued on any indebtedness with respect to one or more insurance policies owned by the taxpayer covering the life of any individual who—

(A) Is an officer or employee of, or

(B) Is financially interested in,

any trade or business carried on by the taxpayer to the extent that the aggregate amount of that indebtedness with respect to policies covering that individual exceeds fifty thousand dollars ($50,000).

This paragraph shall apply with respect to contracts purchased after June 20, 1986.

(b) For purposes of paragraph (2) of subdivision (a), a contract shall be treated as a single premium contract—

(1) If substantially all the premiums on the contract are paid within a period of four years from the date on which the contract is purchased; or

(2) If an amount is deposited after December 31, 1954, with the insurer for payment of a substantial number of future premiums on the contract.

(c) Paragraph (3) of subdivision (a) shall not apply to any amount paid or accrued by a person during an income year on indebtedness incurred or continued as part of a plan referred to in paragraph (3) of subdivision (a).

(1) If no part of four of the annual premiums due during the seven-year period (beginning with the date the first premium on the contract to which such plan relates was paid) is paid under such plan by means of indebtedness.

(2) If the total of the amounts paid or accrued by such person during such income year for which (without regard to this paragraph) no deduction would be allowable by reason of paragraph (3) of subdivision (a) does not exceed one hundred dollars ($100).

(3) If such amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in its financial obligations, or

(4) If such indebtedness was incurred in connection with its trade

or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new seven-year period described in such paragraph with respect to such contract shall commence on the date the first such increased premium is paid.

SEC. 28. Section 24466 of the Revenue and Taxation Code is amended to read:

24466. (a) For purposes of this chapter, the term "Section 24464 stock" means stock which meets the requirements of paragraph (1), (2), or (3) of this subdivision.

(1) Stock (other than common stock issued with respect to common stock) which was distributed to the shareholder selling or otherwise disposing of such stock if, by reason of subdivision (a) of Section 24463, any part of such distribution was not includable in the gross income of the shareholder.

(2) Stock which is not common stock and—

(A) Which was received, by the shareholder selling or otherwise disposing of such stock, in pursuance of a plan of reorganization (within the meaning of Section 24562), or in a distribution or exchange to which Section 24533 (or so much of Sections 24535 to 24539, inclusive, as relates to Section 24533) applied; and

(B) With respect to the receipt of which gain or loss to the shareholder was to any extent not recognized by reason of Chapter 10, but only to the extent that either the effect of the transaction was substantially the same as the receipt of a stock dividend, or the stock was received in exchange for Section 24464 stock.

For purposes of this article, a receipt of stock to which the foregoing provisions of this paragraph apply shall be treated as a distribution of stock

(3) Except as otherwise provided in paragraph (2), stock the basis of which (in the hands of the shareholder selling or otherwise disposing of such stock) is determined by reference to the basis (in the hands of such shareholder or any other person) of Section 24464 stock.

(b) For purposes of this article, the term "Section 24464 stock" does not include any stock no part of the distribution of which would have been a dividend at the time of the distribution if money had been distributed in lieu of the stock.

(c) The term "Section 24464 stock" also includes any stock which is not common stock acquired in an exchange to which Section 24521 applied if receipt of money (in lieu of stock) would have been treated as a dividend to any extent. Rules similar to the rules of paragraph (2) of subdivision (b) of Section 24457 shall apply—

(1) For purposes of the preceding sentence, and

(2) For purposes of determining the application of this section to any subsequent disposition of stock which is Section 24464 stock by reason of an exchange described in the preceding sentence.

(d) For purposes of subparagraph (B) of paragraph (2) of subdivision (a) and subdivision (c), Section 24497 shall apply. For

purposes of applying the preceding sentence to subdivision (c), Section 304(c)(3)(B) of the Internal Revenue Code shall apply.

SEC. 29. Section 24564 of the Revenue and Taxation Code is amended to read:

24564. (a) For purposes of Chapter 8, and this article, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(b) (1) In the case of any transaction with respect to which the requirements of subparagraphs (A) and (B) of paragraph (1) of subdivision (b) of Section 24531 are met, for purposes of determining whether that transaction is described in paragraph (4) of subdivision (a) of Section 24562, the term "control" has the meaning given to that term by Section 304(c) of the Internal Revenue Code.

(2) This subdivision shall apply to transactions pursuant to plans adopted after July 18, 1984.

SEC. 30. Section 24637 of the Revenue and Taxation Code is amended to read:

24637. For income years beginning on or after January 1, 1987, Section 444 of the Internal Revenue Code, relating to election of taxable year other than required taxable year, shall be applicable, except that Section 444(c)(1), relating to effect of election, shall not apply.

SEC. 32. Section 24870 of the Revenue and Taxation Code is amended to read:

24870. The taxation of a real estate mortgage investment conduit (REMIC) and the holders of regular or residual interests in that entity shall be determined in accordance with Part IV of Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code, except as otherwise provided.

SEC. 33. Section 24872 of the Revenue and Taxation Code is amended to read:

24872. A real estate mortgage investment conduit (REMIC) shall be subject to the minimum tax imposed under Section 23153.

SEC. 34. Section 24953.5 of the Revenue and Taxation Code is amended to read:

24953.5. (a) If a qualified housing project is sold or disposed of by the taxpayer in an approved disposition, then, at the election of the taxpayer, gain from that approved disposition shall not be recognized to the extent specified in subdivision (c). An election made under this section shall be made at the time and in the manner specified by the Franchise Tax Board in forms and instructions.

(b) For purposes of this section:

(1) "Qualified housing project" means a project providing rental or cooperative housing for lower income families subject to any of the following with respect to which the owner is, under those sections or regulations issued thereunder limited as to the rate of return on its investment in the project, and limited as to rentals or

occupancy charges for units in the project:

(A) A mortgage insured by the United States Department of Housing and Urban Development under either Section 202, 213, 221(d)(3), 231, 236, or 608 of the National Housing Act.

(B) A mortgage securing a direct loan from the Farmers Home Administration of the United States Department of Agriculture under either Section 514 or 515 of the Housing Act of 1949.

(C) A Housing Assistance Payments contract under Section 8 of the United States Housing Act of 1937, where that contract provides a project-based subsidy under the New Construction, Moderate Rehabilitation, Substantial Rehabilitation, or Loan Management programs.

(2) "Approved disposition" means a sale or other disposition of a qualified housing project to a qualified entity as defined in this subdivision and subject to specific use restrictions, as defined in this subdivision.

(3) "Qualified entities" include any of the following:

(A) A nonprofit corporation that has obtained tax-exempt status under either Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

(B) A public agency or unit of state or local government.

(C) A limited-equity cooperative formed pursuant to Section 33007.5 of the Health and Safety Code.

(D) A limited partnership, of which a general partner is one of the above qualified entities, or an affiliate thereof, where a majority of the board of directors of the affiliate is appointed or removable by the qualified entity or where the qualified entity owns a majority of the voting shares of the affiliate, so long as the partnership agreement limits the annual rate of return to investors to 8 percent of their capital contributions.

(4) A qualified entity acquiring a qualified housing project shall agree, for the useful life of the project, to all of the following conditions and restrictions:

(A) To assume the obligations imposed by any loan agreement, mortgage, subsidy contract, or regulatory agreement on the project.

(B) To restrict occupancy in accordance with the threshold requirements of Section 42(g) of the Internal Revenue Code where less than all of the units in the projects are occupied by tenants whose income make the project eligible for the tax credit under Section 42 of the Internal Revenue Code.

(C) To accept all available rent subsidies on behalf of tenants in the project.

(D) Not to evict tenants without a showing of good cause.

(E) Not to arbitrarily discriminate against applicants for admission on the basis of family income or any other basis prohibited by law.

(F) To establish rents for the project not exceeding those required by the terms of any subsidy program utilized at the project or the rent restrictions required by Section 42 of the Internal

Revenue Code, whichever is less.

(G) To be subject to continued regulation by federal or state housing agencies or the Department of Housing and Community Development to ensure compliance with these regulatory requirements.

(H) To restrict occupancy in accordance with this paragraph by a deed restriction running with the land and enforceable by the Department of Housing and Community Development. Any regulatory agreement establishing these occupancy restrictions shall be deemed a contract and shall be enforceable by affected tenants as third-party beneficiaries thereto.

(c) (1) Where all units in the project are used in accordance with the standards specified in paragraph (4) of subdivision (b), and all of the units are occupied by tenants whose incomes make the project eligible for the tax credit under Section 42 of the Internal Revenue Code, then 50 percent of the gain, which would otherwise be recognized, shall not be recognizable to any extent.

(2) So long as the threshold requirements of Section 42(g) of the Internal Revenue Code are met, where less than all of the units in the project are occupied by tenants whose incomes make the project eligible for the tax credit under Section 42 of the Internal Revenue Code, then the gain shall not be recognized in accordance with the formulas for allocating the low-income housing tax credit, as provided in Section 42 of the Internal Revenue Code.

(d) Upon the receipt of information that a qualified entity is failing to use the project in accordance with the requirements of paragraph (4) of subdivision (b), then the Department of Housing and Community Development shall conduct an investigation of the allegations. If the department determines that the qualified entity is utilizing good faith efforts to use the units in the project to the maximum extent possible in accordance with the restrictions specified in paragraph (4) of subdivision (b), and it is not economically feasible to utilize all units in that fashion, then the department shall not seek to remedy the alleged violation. If the department determines that there exists an unjustified violation of the restrictions specified in paragraph (4) of subdivision (b), then the department shall pursue whatever remedies are specified by law for that violation, including the imposition of a receivership to operate the project in accordance with the requirements of this section and recovery of a penalty from the qualified entity in the amount of tax that would have been imposed upon the capital gain that was not recognized and penalties and interest for delinquent taxes as otherwise provided by law.

(e) No project on which 50 percent of the capital gain has been nonrecognized pursuant to subdivision (c) shall be sold or otherwise disposed of without the prior written approval of the Department of Housing and Community Development. In giving that approval, the department shall ensure that the project shall continue to be subject to the requirements of paragraph (2) of subdivision (b) or that any

net proceeds of the sale are utilized for charitable low-income housing purposes. In determining what constitutes the net proceeds of the sale, where the seller is a qualified limited partnership entity under subparagraph (D) of paragraph (3) of subdivision (b), the Department of Housing and Community Development shall consider the terms of the partnership agreement.

SEC. 34.3. Section 24966 of the Revenue and Taxation Code is amended to read:

24966. (a) The basis in stock purchased shall be reduced by the nontaxed portion of any extraordinary dividend received as provided in Section 1059 of the Internal Revenue Code, except as otherwise provided in this section.

(b) The reduction described in Section 1059(b)(2)(B) of the Internal Revenue Code shall be the amount determined under Section 24402.

(c) Reference to Section 301 of the Internal Revenue Code shall be reference to Sections 24451 to 24454, inclusive.

(d) Reference to Section 301(b)(2) of the Internal Revenue Code shall be reference to subdivision (b) of Section 24452.

(e) Reference to Section 301(c)(2) of the Internal Revenue Code shall be reference to subdivision (b) of Section 24453.

SEC. 34.4. Section 24990.7 is added to the Revenue and Taxation Code, to read:

24990.7. The provision of Section 1248 of the Internal Revenue Code, relating to gain from certain sales for exchanges of stock in certain foreign corporations, shall not apply to transactions occuring after August 20, 1990, in income years beginning on or after January 1, 1990.

SEC. 34.5. Section 25401c of the Revenue and Taxation Code is amended to read:

25401c. A return shall be required to be filed and statements furnished to the person whose name is required to be set forth on the return for certain payments of remuneration for services in accordance with Section 6041A of the Internal Revenue Code, except that no return or statement shall be required if a statement with respect to the services is required to be furnished under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code (relating to withholding tax on wages), and no return or statement shall be required with respect to direct sales pursuant to Section 6041A(b) of the Internal Revenue Code.

SEC. 35. Sections 3 and 18.5 of this bill incorporate amendments to Sections 17052.5 and 23601.5 of the Revenue and Taxation Code proposed by both this bill and SB 86. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Sections 17052.5 and 23601.5 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 86, in which case Sections 2 and 18 of this bill shall not become operative.

SEC. 36. Section 5 of this bill incorporates amendments to Section

17052.6 of the Revenue and Taxation Code proposed by both this bill and SB 2208. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 17052.6 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 2208, in which case Section 4 of this bill shall not become operative.

SEC. 37. Section 14 of this bill incorporates amendments to Section 18515.2 of the Revenue and Taxation Code proposed by both this bill and AB 3628. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 18515.2 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 3628, in which case Section 14 of this bill shall not become operative.

SEC. 38. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1350

An act to amend Sections 33334.2, 33334.3, and 33334.12 of, to amend Section 33080.4, as amended by Section 7 of Chapter 1140 of the Statutes of 1989, to add Section 33334.16 to, and to repeal Section 33080.4, as amended by Section 8 of Chapter 1140 of the Statutes of 1989 of, the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 33080.4 of the Health and Safety Code, as amended by Section 7 of Chapter 1140 of the Statutes of 1989, is amended to read:

33080.4. (a) For the purposes of compliance with subdivision (c) of Section 33080.1, the description of the agency's activities shall contain the following information regardless of whether each activity is funded exclusively by the state or federal government, for each project area and for the agency overall:

(1) Pursuant to Section 33413, the total number of nonelderly and elderly households, including separate subtotals of the numbers of very low income households, other lower income households, and persons and families of moderate income, that were displaced or moved from their dwelling units as part of a redevelopment project of the agency during the previous fiscal year.

(2) Pursuant to Section 33413.5, the total number of nonelderly and elderly households, including separate subtotals of the numbers of very low income households, other lower income households, and persons and families of moderate income, that the agency estimates

will be displaced or will move from their dwellings as part of a redevelopment project of the agency during the present fiscal year and the date of adoption of a replacement housing plan for each project area subject to Section 33413.5.

(3) The total number of dwelling units housing very low income households, other lower income households, and persons and families of moderate income, respectively, which have been destroyed or removed from the low- or moderate-income housing market during the previous fiscal year as part of a redevelopment project of the agency, specifying the number of those units which are not subject to Section 33413.

(4) The total numbers of agency-assisted dwelling units which were constructed, rehabilitated, acquired, or subsidized during the previous fiscal year for occupancy at an affordable housing cost by elderly persons and families, but only if the units are restricted by agreement or ordinance for occupancy by the elderly, and by very low income households, other lower income households, and persons and families of moderate income, respectively, specifying those units which are not currently so occupied, those units which have replaced units destroyed or removed pursuant to subdivision (a) of Section 33413, and the length of time any agency-assisted units are required to remain available at affordable costs.

(5) The total numbers of new or rehabilitated units subject to paragraph (2) of subdivision (b) of Section 33413, including separate subtotals of the number originally affordable to and currently occupied by, elderly persons and families, but only if the units are restricted by agreement or ordinance for occupancy by the elderly, and by very low income households, other lower income households, and persons and families of moderate income, respectively, and the length of time these units are required to remain available at affordable costs.

(6) The status and use of the Low and Moderate Income Housing Fund created pursuant to Section 33334.3, including information on the use of this fund for very low income households, other lower income households, and persons and families of moderate income, respectively. If the Low and Moderate Income Housing Fund is used to subsidize the cost of onsite or offsite improvements, then the description of the agency's activities shall include the number of housing units affordable to persons and families of low or moderate income which have been directly benefited by the onsite or offsite improvements.

(7) A compilation of the annual reports obtained by the agency under Section 33418 including identification of the number of units occupied by persons and families of moderate income, other lower income households, and very low income households, respectively, and identification of projects in violation of law or any agreements in relation to affordable units.

(8) The total amount of funds expended for planning and general administrative costs as defined in subdivisions (d) and (e) of Section

33334.3.

(9) Any other information which the agency believes useful to explain its housing programs, including, but not limited to, housing for persons and families of other than low and moderate income.

(b) As used in this section:

(1) "Elderly," has the same meaning as specified in Section 50067.

(2) "Persons and families of moderate income," has the same meaning as specified in subdivision (b) of Section 50093.

(3) "Other lower income households," has the same meaning as "lower income households" as specified in Section 50079.5, exclusive of very low income households.

(4) "Persons and families of low or moderate income," has the same meaning as specified in Section 50093.

(5) "Very low income households," has the same meaning as specified in Section 50105.

(c) Costs associated with preparing the report required by this section may be paid with moneys from the Low and Moderate Income Housing Fund.

SEC. 2. Section 33080.4 of the Health and Safety Code, as amended by Section 8 of Chapter 1140 of the Statutes of 1989, is repealed.

SEC. 3 Section 33334 2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes which are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless one of the following findings is made annually by resolution:

(1) That no need exists in the community to improve or increase the supply of low- and moderate-income housing in a manner which would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(2) That some stated percentage less than 20 percent of the taxes which are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of

Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with the provisions of Article 9 (commencing with Section 33410).

In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions which are directly related to programs or activities authorized under subdivision (e) of this section.

(b) Within 10 days following the making of a finding under subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purpose of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire real property or building sites subject to the provisions of Section 33334.16.

(2) Improve real property or building sites with onsite or offsite improvements, but only if the improvements directly and specifically improve or increase the community's supply of low- or moderate-income housing.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that such use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(h) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(i) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area which is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

SEC. 4. Section 33334.3 of the Health and Safety Code is amended to read:

33334.3. (a) The funds which are required by Section 33334.2 or 33334.6 to be used for the purposes of increasing and improving the

community's supply of low- and moderate-income housing shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund and any repayments or other income to the agency for loans, advances, or grants, of any kind from the Low and Moderate Income Housing Fund, shall accrue to and be deposited in, the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase, improve, and preserve the supply of low- and moderate-income housing within the territorial jurisdiction of the agency.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to defray the costs of production, improvement, and preservation of low- and moderate-income housing and that the amount of money spent for planning and general administrative activities associated with the development, improvement, and preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, or preservation of that housing. The agency shall determine annually that the planning and administrative expenses are necessary for the production, improvement, or preservation of low- and moderate-income housing.

(e) (1) Planning and general administrative costs which may be paid with moneys from the Low and Moderate Income Housing Fund are those expenses incurred by the agency which are directly related to the programs and activities authorized under subdivision (e) of Section 33334.2 and are limited to the following:

(A) Costs incurred for salaries, wages, and related costs of the agency's staff or for services provided through interagency agreements, and agreements with contractors, including usual indirect costs related thereto.

(B) Costs incurred by a nonprofit corporation which are not directly attributable to a specific project.

(2) Legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of a specific project which are authorized under subdivision (e) of Section 33334.2 and which are incurred by a nonprofit housing sponsor are not planning and administrative costs for the purposes of this section, but are instead project costs.

(f) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted, with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent a longer period of time may be required by other provisions of law, the agency shall require that housing units subject to this subdivision shall remain available at

affordable housing costs to persons and families of low or moderate income and very low income households for the longest feasible time, but for not less than the following periods of time, except as provided in Section 33334.13:

(1) Fifteen years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (A) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (B) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(2) Ten years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the 10-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund.

The agency shall require the recording in the office of the county recorder of covenants or restrictions implementing this subdivision for each parcel or unit of real property subject to this subdivision. Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable, against the original owner and successors in interest, by the agency or the community.

(g) "Housing," as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912. The definitions of "lower income households" and "very low income households" in Sections 50079.5 and 50105 shall apply to this section. "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

(h) "Increasing, improving, and preserving the community's supply of low- and moderate-income housing," as used in this section and in Section 33334.2, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to low- and moderate-income households, including very low income households, for a specified period of time, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require the units remain affordable to persons and families of low- and moderate-income and very low income households for the longest feasible time. However, the agency may replace rental units with equally affordable and comparable rental units in another

location within the community if (1) the replacement units in another location are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (2) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

SEC. 5. Section 33334.12 of the Health and Safety Code is amended to read:

33334.12. (a) Upon failure of the agency to expend or encumber excess surplus in the Low and Moderate Income Housing Fund within five years from the date the moneys become excess surplus, within the meaning defined in Section 33334.10, the agency shall disburse that excess surplus to the county housing authority or other housing authority operating within the agency's jurisdiction or another public agency exercising housing development powers within the territorial jurisdiction of the agency in accordance with subdivision (b). The housing authority or other public agency to which the money is transferred shall utilize the moneys for the purposes and subject to the same restrictions as applicable to the redevelopment agency under this part, and for that purpose may exercise all of the powers of a housing authority under Part 2 (commencing with Section 34200) to the extent not inconsistent with these limitations.

Notwithstanding Section 34209 or any other provision of law, for the purpose of accepting a transfer of, and using, moneys pursuant to this section, the housing authority of a county or other public agency may exercise its powers within the territorial jurisdiction of a city redevelopment agency in the county.

(b) The amount of excess surplus which shall be transferred to the housing authority or other public agency because of failure of the agency to expend or encumber excess surplus within five years shall be the amount of the excess surplus that is not so expended or encumbered. The housing authority or other public agency to which the moneys are transferred shall expend or encumber them for authorized purposes not later than three years from the date they were transferred from the Low and Moderate Income Housing Fund.

(c) Nothing in this section shall be construed to limit any authority a redevelopment agency may have under other provisions of this part to contract with a housing authority for increasing or improving the community's supply of low- and moderate-income housing.

(d) For purposes of this section:

(1) "Excess surplus" means any unexpended and unencumbered amount in an agency's Low and Moderate Income Housing Fund that exceeds the greater of five hundred thousand dollars ($500,000) or the aggregate amount deposited into the Low and Moderate Income Housing Fund pursuant to Sections 33334.2 and 33334.6 during the agency's preceding five fiscal years.

(2) Moneys shall be deemed encumbered if committed pursuant to a legally enforceable contract or agreement for expenditure for purposes specified in Section 33334.2 or 33334.3.

(3) For purposes of determining whether an excess surplus exists, it is the intent of the Legislature to give credit to agencies which convey land for less than fair market value, on which low- and moderate-income housing is built or is to be built if at least one-half of the units developed on the land are available at affordable housing cost to lower income households for at least the time specified in subdivision (e) of Section 33334.3, and otherwise comply with all of the provisions of this division applicable to expenditures of moneys from a low- and moderate-income housing fund established pursuant to Section 33334.3. Therefore, for the sole purpose of determining the amount, if any, of an excess surplus, an agency may make the following calculation: if an agency sells, leases, or grants land acquired with moneys from the Low and Moderate Income Housing Fund, established pursuant to Section 33334.3, for an amount which is below fair market value, and if at least one-half of the units constructed or rehabilitated on the land are affordable to lower income households, as defined in Section 50079.5, the difference between the fair market value of the land and the amount the agency receives may be subtracted from the amount of moneys in an agency's Low and Moderate Income Housing Fund.

Nothing in this subdivision shall be construed to restrict the authority of an agency provided in any other provision of this part to expend funds from the Low and Moderate Income Housing Fund.

SEC. 6. Section 33334.16 is added to the Health and Safety Code, to read:

33334.16. For each interest in real property acquired using moneys from the Low and Moderate Income Housing Fund, the agency shall, within five years from the date it first acquires the property interest for the development of housing affordable to persons and families of low and moderate income, initiate activities consistent with the development of the property for that purpose. These activities may include, but are not limited to, zoning changes or agreements entered into for the development and disposition of the property. If these activities have not been initiated within this period, the legislative body may, by resolution, extend the period during which the agency may retain the property for one additional period not to exceed five years. The resolution of extension shall affirm the intention of the legislative body that the property be used for the development of housing affordable to persons and families of low and moderate income. In the event that physical development of the property for this purpose has not begun by the end of the extended period, or if the agency does not comply with this requirement, the property shall be sold and the moneys from the sale, less reimbursement to the agency for the cost of the sale, shall be deposited in the agency's Low and Moderate Income Housing Fund.

SEC. 7. For purposes of subdivision (e) of Section 16112.7 of the Government Code, the redevelopment agencies of the Cities of Chula Vista, Compton, and South Gate shall be deemed to meet the criteria for the exemption and, therefore, the reductions required pursuant to subdivisions (a), (b), (c), and (d) of Section 16112.7 shall not apply.

SEC. 8.Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address serious problems regarding the operations and funding of redevelopment agencies, it is necessary that this act take immediate effect.

CHAPTER 1351

An act to amend Sections 1570.2 and 1570.7 of the Health and Safety Code, and to amend Sections 14521, 14529, 14550, 14552, and 14571 of, to add Sections 14552.1 and 14552.2 to, and to add Article 4.5 (commencing with Section 14580) to Chapter 8.7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to adult day health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 26, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 1570.2 of the Health and Safety Code is amended to read:

1570.2. The Legislature hereby finds and declares that there exists a pattern of overutilization of long-term institutional care for the elderly and that there is an urgent need to establish and to continue a community-based system of quality adult day health care which will enable older persons with medical or psychiatric impairments to maintain maximum independence. While

recognizing that there continues to be a substantial need for facilities providing custodial care, overreliance on such care has proven to be a costly panacea in both financial and human terms, often traumatic, and destructive of continuing family relationships and the capacity for independent living.

It is, therefore, the intent of the Legislature in enacting this chapter and related provisions to provide for the development of policies and programs which will accomplish the following:

(a) Assure that elderly persons are not institutionalized inappropriately or prematurely.

(b) Provide a viable alternative to institutionalization for those older impaired persons who are capable of living at home with the aid of appropriate health care or rehabilitative and social services.

(c) Establish adult day health centers in the community for such purpose, which will be easily accessible to all participants, including the economically disadvantaged older person, and which will provide outpatient health, rehabilitative, and social services necessary to permit the participants to maintain personal independence and lead meaningful lives.

(d) Include the services of adult day health centers as a benefit under the Medi-Cal Act, which shall be an initial and integral part in the development of an overall plan for a coordinated, comprehensive continuum of optional long-term care services based upon appropriate need.

(e) Establish a rural alternative adult day health care program which is designed to meet the special needs and requirements of rural areas to enable the implementation of subdivisions (a) through (d), inclusive, for all Californians in need of those services.

SEC. 2. Section 1570.7 of the Health and Safety Code is amended to read:

1570.7. As used in this chapter:

(a) "Adult day health care" means an organized day program of therapeutic, social, and health activities and services provided pursuant to this chapter to elderly persons with functional impairments, either physical or mental, for the purpose of restoring or maintaining optimal capacity for self-care. Provided on a short-term basis, adult day health care serves as a transition from a health facility or home health program to personal independence. Provided on a long-term basis, it serves as an option to institutionalization in long-term care facilities, when 24-hour skilled nursing care is not medically necessary or viewed as desirable by the recipient or his or her family.

(b) "Adult day health center" means a facility which provides adult day health care.

(c) "Elderly" or "older person" means a person 55 years of age or older, but also includes other persons who are chronically ill or impaired and who would benefit from adult day health care.

(d) "Individualized plan of care" means a plan designed to provide recipients of adult health care with appropriate treatment

in accordance with the assessed needs of each individual.

(e) "License" means a basic permit to operate an adult day health center. With respect to a health facility licensed pursuant to Chapter 2 (commencing with Section 1250), "license" means a special permit, as defined by Section 1251.5, empowering the health facility to provide adult day health care services as a separate program in a distinct part of the facility.

(f) "Maintenance program" means procedures and exercises that are provided to a participant in order to generally maintain existing function. These procedures and exercises are planned by a licensed or certified therapist and are provided by a person who has been trained by a licensed or certified therapist and who is directly supervised by a nurse or licensed or certified therapist.

(g) "Planning council" or "council" means an adult day health care planning council established pursuant to Section 1572.5.

(h) "Restorative therapy" means physical, occupational, and speech therapy, and psychiatric and psychological services, that are planned and provided by a licensed or certified therapist. The therapy and services can also be provided by an assistant or aide under the appropriate supervision of a licensed therapist, as determined by the licensed therapist. The therapy and services are provided to restore function, when there is no expectation that the condition will improve significantly in a reasonable period of time, as determined by the multidisciplinary assessment team.

(i) "State review committee" or "committee" means the Adult Day Health Care Review Committee established pursuant to Section 1572.

SEC. 3. Section 14521 of the Welfare and Institutions Code is amended to read:

14521. It is the intent of the Legislature in enacting this chapter to establish adult day health care as a Medi-Cal benefit and allow persons eligible to receive the benefits under Chapter 7 (commencing with Section 14000) of this part, and who have medical or psychiatric impairments, to receive adult day health care services. It is the intent of the Legislature in authorizing such a Medi-Cal benefit to establish and continue a community-based system of quality day health services which will (1) ensure that older persons not be institutionalized prematurely and inappropriately, (2) provide appropriate health and social services designed to maintain older persons in their own homes, (3) establish adult day health centers in locations easily accessible to the economically disadvantaged older person, and (4) encourage the establishment of rural alternative adult day health care centers which are designed to make adult day health care accessible to impaired Californians living in rural areas.

SEC. 4. Section 14529 of the Welfare and Institutions Code is amended to read:

14529. (a) The multidisciplinary health team conducting an assessment shall consist of at least the individual's personal physician

or a staff physician, or both, a registered nurse, and a social worker.

(b) For the initial assessment, the multidisciplinary health team shall also include a physical therapist and an occupational therapist. In addition, when the need is identified by a physician or nurse, qualified consultants with skills in recreational therapy, speech language pathology, or dietary assessment shall serve as team members.

(c) The multidisciplinary team described in subdivision (b) shall conduct an initial assessment. At the time of reassessment, if an individual plan of care has been developed by the physical therapist or the occupational therapist, they shall reassess the participant to determine any ongoing or different needs for physical therapy or occupational therapy services. If it is determined that no further physical therapy or occupational therapy is needed, the physical therapist and the occupational therapist shall not be required to sign the treatment plan. For further reassessments, the nurse or physician shall determine if the physical therapist or occupational therapist is needed.

(d) The assessment team shall:

(1) Determine the medical, psychosocial, and functional status of each participant.

(2) Develop an individualized plan of care, including goals, objectives, and services designed to meet the needs of the person, which shall be signed by each member of the multidisciplinary team, except that the signature of only one physician member of the team shall be required.

(3) At least biannually reassess the participant's individualized plan of care and make any necessary adjustments to the plan.

(4) If the initial assessment shows that restorative therapy is needed, acute rehabilitative treatment shall be provided by the appropriate licensed or certified personnel.

(5) If the initial assessment shows that restorative therapy is not needed, the multidisciplinary team shall develop an individual maintenance program as part of the plan of care.

SEC. 5. Section 14550 of the Welfare and Institutions Code is amended to read:

14550. Adult day health centers shall offer, and shall provide directly on the premises, at least the following services:

(a) Rehabilitation services, including the following:

(1) Occupational therapy as an adjunct to treatment designed to restore impaired function of patients with physical or mental limitations.

(2) Physical therapy appropriate to meet the needs of the patient.

(3) Speech therapy for participants with speech or language disorders.

(b) Medical services supervised by either the participant's personal physician or a staff physician, or both, which emphasize prevention treatment, rehabilitation, and continuity of care and also provide for maintenance of adequate medical records. To the extent

otherwise permitted by law, medical services may be provided by nurse practitioners, as defined in Section 2835 of the Business and Professions Code, operating within the existing scope of practice, or under standardized procedures pursuant to Section 2725 of the Business and Professions Code, or by registered nurses practicing under standardized procedures pursuant to Section 2725 of the Business and Professions Code.

(c) Nursing services, including the following:

(1) Nursing services rendered by a professional nursing staff, who periodically evaluate the particular nursing needs of each participant and provide the care and treatment that is indicated.

(2) Self-care services oriented toward activities of daily living and personal hygiene, such as toileting, bathing, and grooming.

(d) Nutrition services, including the following:

(1) The program shall provide a minimum of one meal per day which is of suitable quality and quantity as to supply at least one-third of the daily nutritional requirement. Additionally, special diets and supplemental feedings shall be available if indicated.

(2) Dietary counseling and nutrition education for the participant and his or her family shall be a required adjunct of such service. Dietary counseling and nutrition education may be provided by a professional registered nurse, unless the participant is receiving a special diet prescribed by a physician, or a nurse determines that the services of a registered dietician are necessary.

(e) Psychiatric or psychological services which include consultation and individual assessment by a psychiatrist, clinical psychologist, or a psychiatric social worker, when indicated, and group or individual treatment for persons with diagnosed mental, emotional, or behavioral problems.

(f) Social work services to participants and their families to help with personal, family, and adjustment problems that interfere with the effectiveness of treatment.

(g) Planned recreational and social activities suited to the needs of the participants and designed to encourage physical exercise, to prevent deterioration, and to stimulate social interaction.

(h) Transportation service for participants, when needed, to and from their homes utilizing specially equipped vehicles to accommodate participants with severe physical disabilities that limit their mobility.

(i) Written procedures for dealing with emergency situations. Such written procedures shall include the name and telephone number of a physician on call, written arrangements with a nearby hospital for inpatient and emergency room service, and provision for ambulance transportation.

SEC. 6. Section 14552 of the Welfare and Institutions Code is amended to read:

14552. In order to obtain certification as a provider of adult day health care under this chapter and Chapter 7 (commencing with Section 14000), the following standards shall be met:

(a) The provider shall have met all other requirements of licensure as an adult day health center pursuant to Chapter 3.5 (commencing with Section 1570) of Division 2 of the Health and Safety Code.

(b) The provider shall comply with requirements of this chapter regarding program and scope of services.

(c) The provider shall have appropriate licensed personnel.

(d) The provider shall employ allied health and social personnel for furnishing of services consistent with good medical practice.

(e) A provider serving a substantial number of participants of a particular racial group, or whose primary language is other than English, shall employ staff of that particular racial or linguistic group at all times.

(f) A provider shall have organizational and administrative capacity to provide services under provisions of this chapter.

(g) The Department of Aging may allow the substitution of work experience for academic requirements for the position of administrator, program director, or activity coordinator.

SEC. 7. Section 14552.1 is added to the Welfare and Institutions Code, to read:

14552.1. A provider may share space with another licensed health facility, community care facility, senior center, or other appropriate structure, upon the approval of the Department of Aging, based upon a determination of all of the following:

(a) The use of the shared space does not jeopardize the welfare of the participant or other clients.

(b) The shared use does not exceed occupancy capacity established for fire safety.

(c) The space used by the adult day health center is not essential to meet the other program's licensing requirements.

(d) Each entity schedules services and activities at separate times. This subdivision does not apply to space used for meals or for space used by another licensed adult day services program.

For purposes of this section, "shared space" means the mutual use of exits and entrances, offices, hallways, bathrooms, treatment rooms, and dining rooms by an adult day health center and another program.

SEC. 8. Section 14552.2 is added to the Welfare and Institutions Code, to read:

14552.2. Notwithstanding subdivisions (b) and (c) of Section 1570.7 of the Health and Safety Code or any other provision of law, if an adult day health center licensee also provides adult day care, adult day social care, or Alzheimer's day care resource center services, the adult day health care license shall be the only license required to provide these additional services. Costs shall be allocated among the programs in accordance with generally accepted accounting practices.

SEC. 9. Section 14571 of the Welfare and Institutions Code is amended to read:

14571. The State Department of Health Services, in consultation with the Association of Adult Day Services, shall develop a rate methodology. The methodology shall take into consideration all allowable costs associated with providing adult day health care services. Once a methodology has been approved by the department, it shall be the basis of future annual rate reviews.

Payment shall be for services provided during the preceding month in accordance with an approved individualized plan of care. Billing shall be submitted directly to the department. Additionally, the department shall establish a reasonable rate of reimbursement for the initial assessment.

Nothing in this section shall preclude the department from entering into specific prospective budgeting and reimbursement agreements with providers.

SEC. 10. Article 4.5 (commencing with Section 14580) is added to Chapter 8.7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 4.5. Rural Alternative Adult Day Health Care Centers

14580. (a) A rural alternative adult day health care center shall operate its programs a minimum of three days weekly unless the program can justify, to the satisfaction of the department, fewer days of operation due to space, staff, financial, or participant reasons.

(b) Programs desiring to become a parent center and develop a satellite program may be located in a service area which does not meet the population requirements of the rural service areas and need not be in the same county as a satellite. The satellite shall be located in an area that meets the population requirements of a rural service area and shall be located within a reasonable distance of the parent center to allow sharing of administration, services, and supervision. Parent and satellite centers shall be located in the same licensing district office.

(c) Notwithstanding any other provision of law, the administrator or program director of a parent center may, with the approval of the department, serve as the administrator or program director for up to three additional satellite sites.

(d) For the purposes of this section, the following definitions apply:

(1) "Parent" means a licensed and certified adult day health center which establishes one or more satellites. A satellite may be in the county of the parent or rural service areas. The parent center provides administration, supervision, and, with the approval of the department, may share services and staff with one or more satellite centers. The parent's license and certification covers adult day health care services at one or more satellites.

(2) "Rural alternative adult day health care center" means an adult day health center located in a rural service area.

(3) "Rural service area" means any identified service area in an

approved adult day health care county plan with 200 or less estimated adult day health care eligible population and with two or more of the following characteristics:

(A) Is more than one-half hour direct driving time from an urban area of 50,000 population or more.

(B) Has no other adult day health center within one-half hour direct driving time.

(C) Has geographic or climatic barriers, including, but not limited to, snow, fog, ice, mountains, inadequate highways, or weather, which makes transportation to another adult day health center impractical.

(D) Is located in a county with an overall population density of less than 100 persons per square mile.

(E) Can demonstrate in the application for licensure that a shortage of qualified professionals exists in the county or service area.

(4) "Satellite" means an adult day health care center established in a rural service area by an existing licensed and certified adult day health center for the purposes of extending rural adult day health care services to another location. A satellite shall be located close enough to the adult day health center so that administration, supervision and services may be shared in a manner that does not compromise care and makes it unnecessary for the satellite to be separately licensed. Each satellite shall meet fire and life safety regulations and laws. Prior approval from the department is required before operating or opening a satellite.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This act allows for critically needed program flexibility in order to relieve some of the tremendous burden assumed by families in caring for persons with functional limitations, and to allow for the establishment of additional adult day health centers. Therefore, it is necessary that this act take effect immediately.

CHAPTER 1352

An act to amend Section 10856 of, and to repeal Section 10855 of, the Revenue and Taxation Code, and to amend Sections 4452, 9269, 9407, 9553, 9554, 9706, 9710, 9862, and 38246 of, to add Sections 4000.5 and 38121 to, to add and repeal Sections 4604.5 and 9862.2 of, to repeal and add Sections 4604 and 38122 of, and to repeal Sections 9708 and 42234 of, the Vehicle Code, relating to registration of vehicles and vessels, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 10855 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 10856 of the Revenue and Taxation Code is amended to read:

10856. Upon receipt of the application for renewal of registration, the department shall collect the required fee for the current registration year. No penalty shall be imposed if the department receives the application within 20 days after the date the vehicle is first operated, moved, or left standing upon any highway during its current registration year and the applicant has timely filed, pursuant to subdivision (a) of Section 4604 of the Vehicle Code, a certification that the vehicle will not be operated, moved, or left standing upon any highway during the current registration year without first making an application for registration of the vehicle, including full payment of fees.

SEC. 2.5. Section 4000.5 is added to the Vehicle Code, to read:

4000.5. (a) The department shall, within 90 days of the effective date of this section, implement, on a demonstration basis within the County of Los Angeles, a toll-free telephone number available to the public for use in reporting unregistered vehicles, vehicles without evidence of current registration, and other vehicle registration violations so that appropriate enforcement action can be undertaken by the department in an expeditious manner. The department shall take appropriate action to publicize the toll-free telephone number.

(b) The department shall, on or before July 1, 1991, report to the Legislature on its experience involving the effectiveness and public acceptance and use of the toll-free telephone number required under subdivision (a), including the department's recommendations with respect to its continuation, expansion, or discontinuance.

SEC. 3. Section 4452 of the Vehicle Code is amended to read:

4452. The department may issue a certificate of ownership to the legal owner of a vehicle without requiring registration, and may issue a facsimile copy of the certificate to the owner if there is no legal owner, subject to both of the following conditions:

(a) The application is submitted in proper form.

(b) A certification has been filed with the department, pursuant to subdivision (a) of Section 4604, that the vehicle has not been driven, moved, or left standing upon any highway so as to require payment of fees and that the owner will not thereafter permit that operation or movement of the vehicle or leave the vehicle standing on any highway without surrendering, or arranging to surrender, the certificate of ownership to the department and without first making an application for the regular registration of the vehicle and full payment of all fees required to be paid under this code and Part 5

(commencing with Section 10701) of Division 2 of the Revenue and Taxation Code.

SEC. 4. Section 4604 of the Vehicle Code is repealed.

SEC. 5. Section 4604 is added to the Vehicle Code, to read:

4604. (a) Prior to the expiration of the registration of a vehicle, if that registration is not to be renewed prior to its expiration, the owner of the vehicle shall file, under penalty of perjury, a certification that the vehicle will not be operated, moved, or left standing upon any highway during the subsequent registration year without first making an application for registration of the vehicle, including full payment of all fees. The certification of nonoperation is valid only for the registration year for the vehicle, but may be renewed annually prior to its expiration.

(b) Each certification of nonoperation filed pursuant to subdivision (a) shall be accompanied by a filing fee of five dollars ($5).

(c) An application for renewal of registration, whether or not accompanied by an application for transfer of title to, or any interest in, the vehicle, shall be submitted to the department with payment of the required fees for the current registration year and without penalty for delinquent payment of fees imposed under this code or under Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code if the department receives the application within 20 days after the date the vehicle is first operated, moved, or left standing upon any highway during the current registration year and the certification of nonoperation required pursuant to subdivision (a) was timely filed with the department.

(d) A certification of nonoperation is not required to be filed pursuant to subdivision (a) for either of the following:

(1) A vehicle on which the registration expires while being held as inventory by a dealer or lessor-retailer.

(2) A vehicle registered pursuant to Article 4 (commencing with Section 8050) of Chapter 4 of Division 3.

SEC. 6. Section 4604.5 is added to the Vehicle Code, to read:

4604.5. (a) Owners of vehicles for which the registration has expired on or before July 1, 1990, may submit a certificate of nonoperation in lieu of fees or penalties under this code or Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code for any period during which the vehicle was not operated, moved, or left standing upon any highway prior to the first annual registration renewal date of the vehicle after July 1, 1990.

(b) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

SEC. 7. Section 9269 of the Vehicle Code is amended to read:

9269. A licensed automobile dismantler who acquires, for the purpose of dismantling, a vehicle of a type subject to registration under this code, and who complies with Section 11520, is not required to pay fees or penalties that would otherwise be required if that

vehicle were to be currently registered.

SEC. 8. Section 9407 of the Vehicle Code is amended to read:

9407. Upon application for registration made after the first month of any registration year, or, if the vehicle is registered on a partial year basis, after the first month following expiration of the last issued registration certificates, the fee required under Section 9400 shall be reduced proportionately for each month which has elapsed since the expiration of the last issued registration certificate if a certification of nonoperation was filed pursuant to subdivision (a) of Section 4604 prior to the expiration of the registration.

SEC. 9. Section 9553 of the Vehicle Code is amended to read:

9553. (a) A penalty shall be added upon any application for renewal of registration or any application for renewal of special license plates made after midnight of the expiration date thereof, except as provided in Section 4604 and in subdivision (b).

(b) When renewal fee penalties have not accrued with respect to a vehicle and the vehicle is transferred, the transferee has 20 days from the date of the transfer to pay the registration fees which become due without payment of any penalties that would otherwise be required under subdivision (a) or to file a certification pursuant to subdivision (a) of Section 4604 if the vehicle will not be operated, moved, or left standing upon any highway during the subsequent registration year without first making application for registration of the vehicle, including full payment of all fees.

(c) If the fee specified in Sections 9255 and 9257 is not paid within 20 days after it becomes delinquent, a penalty shall be added thereto.

(d) Except as otherwise provided in this section, if any fee is not paid within 20 days after it becomes delinquent, a penalty shall be added thereto.

SEC. 10. Section 9554 of the Vehicle Code is amended to read:

9554. (a) The penalty shall be computed as provided in Sections 9406 and 9559 and shall be collected with the fee, except that the penalty for deliquency with respect to any transfer is ten dollars ($10) and applies only to the last transfer.

(b) A penalty shall be added on any application for original or renewal of registration made later than midnight of the date of expiration or on or after the date penalties become due. The penalty shall be computed after the registration and weight fees have been combined with the license fee specified in Section 10751 of the Revenue and Taxation Code, as follows:

(1) For a delinquency period of one year or less, the penalty is 40 percent of the fee

(2) For a delinquency period of more than one year to and including two years, the penalty is 80 percent of the fee.

(3) For a delinquency period of more than two years, the penalty is 160 percent of the fee.

SEC. 11. Section 9706 of the Vehicle Code is amended to read:

9706. (a) Application for partial year registration in conjunction with an application for original California registration shall be made

by the owner within 20 days of the date the vehicle first becomes subject to California registration. Any application for partial year registration submitted after that 20-day period shall be denied registration for a partial year, and the vehicle shall be subject to payment of the fees for the entire registration year. In addition to the fee for the registration year, a penalty, as specified in Section 9554, shall be added to the fee for registration.

(b) Any application to renew registration for a part of the remainder of the registration year or for the entire remainder of the registration year shall be made prior to midnight of the expiration date of the last issued registration certificate. Application shall be made upon presentation of the last issued registration card or of a potential registration issued by the department for use at the time of renewal and by payment of the required partial year fees, or, if renewal is for the remainder of the registration year, by payment of the annual fee required by Section 9400, as reduced pursuant to Section 9407. Any application submitted after the expiration date of the last issued registration certificate for which a certification of nonoperation has not been filed pursuant to subdivision (a) of Section 9604, shall be refused partial year registration and shall be subject to payment of the full fees for the registration year or remainder thereof. In addition to the fee for the registration year or remainder thereof, a penalty as specified in Section 9554 shall be added to the fee for renewal of registration.

(c) In order to obtain partial year registration or renewal of partial year registration for a period of less than three months, the application shall be made prior to the date the vehicle is first operated, moved, or left standing on the highways. Partial year registration, or renewal of partial year registration, may be obtained for a minimum of three months if application is made within 20 days of the date the vehicle is first operated, moved, or left standing on the highways.

(d) Notwithstanding subdivision (c), the owner of any vehicle being moved or operated for the purpose of providing support to firefighting operations while the vehicle or owner is under contract to the United States Forestry Service, the United States Department of the Interior, the Bureau of Land Management, the Department of Forestry and Fire Protection, or the Office of Emergency Services may obtain partial year registration if application is made within 20 days of the date the vehicle is first operated, moved, or left standing on the highway and the owner has obtained a letter of authorization from the department prior to the date that the vehicle is first operated, moved, or left standing on the highway.

SEC. 12. Section 9708 of the Vehicle Code is repealed.

SEC. 13. Section 9710 of the Vehicle Code is amended to read:

9710. When an application for renewal of registration of a vehicle has been made as required by Section 9706, the vehicle may be operated on the highways until the new certificate or insignia of current registration has been received from the department if there

is displayed on the vehicle, in addition to the license plates or validating devices issued to the vehicle for the previous year, the certificate or insignia issued to the vehicle for the previous partial year.

SEC. 14. Section 9862 of the Vehicle Code is amended to read:

9862. (a) If the initial application for a number is not received by the department on or before the date set by the department, a penalty of one-half of the fee shall be assessed. If a certificate of number is not renewed on or before midnight of the expiration date, a penalty of one-half of the fee shall be assessed.

(b) If any person has received as the transferee of a vessel a properly endorsed certificate of ownership and certificate of number describing that vessel and the transfer fee has not been paid as required by this code within 30 days, a penalty of one-half of the transfer fee specified in Section 9855 shall be assessed.

SEC. 15. Section 9862.2 is added to the Vehicle Code, to read:

9862.2. (a) Owners of vessels for which the certificate of number has expired on or before December 31, 1990, may submit a certificate of nonoperation in lieu of fees or penalties, or both, as required by this code, for any period during which the vessel was not used on the waters of the state prior to January 1, 1991.

(b) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1995, deletes or extends that date.

SEC. 16. Section 38121 is added to the Vehicle Code, to read:

38121. (a) Prior to the expiration of the identification of an off-highway motor vehicle, if that identification is not to be renewed prior to its expiration, the owner of the vehicle shall file, under penalty of perjury, a certification that the vehicle will not be operated, used, or transported on public property or private property in a manner so as to subject the vehicle to identification during the subsequent identification period without first making an application for identification of the vehicle, including full payment of all fees. The certification of nonoperation is valid until midnight on the 30th day of June in the second calendar year following the year of certification, but may be renewed biennially prior to its expiration.

(b) Each certification of nonoperation filed pursuant to subdivision (a) shall be accompanied by a filing fee of five dollars ($5).

(c) An application for renewal of identification, whether or not accompanied by an application for transfer of title to, or any interest in, the vehicle, shall be submitted to the department with payment of the required fees for the current identification period and without penalty for delinquent payment of fees imposed under this code if the department receives the application within 10 days after the date the vehicle is first operated, used, or transported on public property or private property in a manner so as to subject the vehicle to identification and certification of nonoperation required pursuant to

subdivision (a).

(d) A certification of nonoperation is not required to be filed pursuant to subdivision (a) for a vehicle on which the identification expires while being held as inventory by a dealer or lessor-retailer.

SEC. 17. Section 38122 of the Vehicle Code is repealed.

SEC. 18. Section 38122 is added to the Vehicle Code, to read:

38122. (a) Owners of vehicles for which the identification has expired prior to June 30, 1990, may submit a certificate of nonoperation in lieu of fees or penalties, or both, as required by this code, for any period during which the vehicle was not operated, used, or transported on public property or private property prior to the first identification renewal date of the vehicle on or after June 30, 1990.

(b) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

SEC. 19. Section 38246 of the Vehicle Code is amended to read:

38246. (a) A penalty shall be added upon any application for renewal of identification made on or after the day following the expiration date, except as provided in Section 4605, 38122, or 38247.

(b) If the fee specified in subdivision (a) or (b) of Section 38255 is not paid within 10 days after the fee becomes delinquent, a penalty shall be assessed.

(c) If renewal fee penalties have not accrued and the ownership of the vehicle is transferred, the transferee has 20 days from the date of transfer to pay the identification fees which become due without payment of any penalties that would otherwise be required under subdivision (a) or to file a certificate of nonoperation pursuant to subdivision (a) of Section 38122 if the vehicle will not be operated, used, or transported on public property or private property in a manner so as to subject the vehicle to identification during the subsequent identification period without first making application for identification of the vehicle, including full payment of all fees.

(d) Except as otherwise provided in this section, if any fee is not paid within 20 days after the fee becomes delinquent, a penalty shall be assessed.

SEC. 20. Section 42234 of the Vehicle Code is repealed.

SEC. 21. Sections 1 to 15, inclusive, and Section 20 of this act shall become operative on July 1, 1990.

SEC. 22. Sections 16 to 19, inclusive, of this act shall become operative on June 30, 1990.

SEC. 23. The sum of eight million two hundred sixty-five thousand dollars ($8,265,000) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles for costs incurred by the department in carrying out the provisions of this act relating to the registration of motor vehicles operated on the highways and the enforcement of laws relating to that registration.

SEC. 24. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the revenues from registration fees which would be generated by this act may be made available at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1353

An act to amend Section 4007 of the Penal Code, relating to prisoners.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 4007 of the Penal Code is amended to read:

4007. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the judge of the superior court may, by a written order filed with the county clerk, designate the jail of a contiguous county for the confinement of any prisoner of his or her county, and may at any time modify or vacate the order.

When there are reasonable grounds to believe that a prisoner may be forcibly removed from a county jail, the sheriff may remove the prisoner to any California state prison for safekeeping and it is the duty of the warden of the prison to accept and detain the prisoner in his or her custody until his or her removal is ordered by the superior court of the county from which he or she was delivered. Immediately upon receiving the prisoner the warden shall advise the Director of Corrections of that fact in writing.

When a county prisoner requires medical treatment necessitating hospitalization which cannot be provided at the county jail or county hospital because of lack of adequate detention facilities, and when the prisoner also presents a serious custodial problem because of his or her past or present behavior, the judge of the superior court may, on the request of the county sheriff and with the consent of the

Director of Corrections, designate by written order the nearest state prison or correctional facility which would be able to provide the necessary medical treatment and secure confinement of the prisoner. The written order of the judge shall be filed with the county clerk. The court shall immediately calendar the matter for a hearing to determine whether the order shall continue or be rescinded. The hearing shall be held within 48 hours of the initial order or the next judicial day, whichever occurs later. The prisoner shall not be transferred to the state prison or correctional facility prior to the hearing, except upon a determination by the physician responsible for the prisoner's health care that a medical emergency exists which requires the transfer of the prisoner to the state prison or correctional facility prior to the hearing. The prisoner shall be entitled to be present at the hearing and to be represented by counsel. The prisoner may waive his or her right to this hearing in writing at any time. If the prisoner waives his or her right to the hearing, the county sheriff shall notify the prisoner's attorney of the transfer within 48 hours, or the next business day, whichever is later. The court may modify or vacate the order at any time.

The rate of compensation for the prisoner's medical treatment and confinement within a California state prison or correctional facility shall be established by the Department of Corrections, and shall be charged against the county making the request.

When there are reasonable grounds to believe that there is a prisoner in a county jail who is likely to be a threat to other persons in the facility or who is likely to cause substantial damage to the facility, the judge of the superior court may, on the request of the county sheriff and with the consent of the Director of Corrections, designate by written order the nearest state prison or correctional facility which would be able to secure confinement of the prisoner, subject to space available. The written order of the judge must be filed with the county clerk. The court shall immediately calendar the matter for a hearing to determine whether the order shall continue or be rescinded. The hearing shall be held within 48 hours of the initial order or the next judicial day, whichever occurs later. The prisoner shall be entitled to be present at the hearing and to be represented by counsel. The court may modify or vacate that order at any time. The rate of compensation for the prisoner's confinement within a California state prison or correctional facility shall be established by the Department of Corrections and shall be charged against the county making the request.

SEC. 2. The Legislature declares that this act mandates a new program or higher level of service on local government. As required by Section 6 of Article XIII B of the California Constitution, reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000),

shall be made from the State Mandates Claims Fund.

CHAPTER 1354

An act to amend Sections 42005 and 42007 of, to add Section 42005.1 to, and to add and repeal Section 42005.2 of, the Vehicle Code, relating to traffic violator schools.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 42005.1 is added to the Vehicle Code, to read:

42005.1. The court may order any person designated to attend a traffic violator school to instead participate in a study of traffic violator schools licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5. The person's participation in that study constitutes attending a court-supervised program of traffic safety instruction for purposes of Section 42007.

SEC. 2. Section 42005.2 is added to the Vehicle Code, to read:

42005.2. (a) The department shall contract with a motor club, as defined in Section 12142 of the Insurance Code, which has its headquarters in the southern California area, for the conduct of a study, as described in this section, which shall be conducted at the sole expense of the contracting motor club, if the motor club agrees to each expense prior to the incurring of any obligation. The department shall do whatever is necessary to assure that the study is conducted in an impartial, unbiased manner. The purpose of the study is to identify ways to enhance the traffic safety effectiveness of traffic violator schools through their educational impact.

(b) The study shall include the examination of not less than 10,000 individuals who have been designated to attend participating traffic violator schools in the greater Los Angeles area. A statistically significant sample of those individuals, randomly selected, shall be excused from the instructional portion of classroom attendance but shall comply with all other aspects of traffic violator school attendance. The study shall examine the driving record of participants for not less than one year following school completion. The department may release driving record information for purposes of the study. Any information gained regarding individual schools or individual students shall be confidential. Any information gained regarding characteristics of traffic violator school methodology and its relation to driver safety shall be made public upon the completion of the study.

(c) (1) The Traffic Violator School Study Committee is hereby created. The committee is composed of 13 members appointed by

the director, as follows:

(A) Two representatives of the department.

(B) Four representatives of traffic schools.

(C) Two representatives of the motor club with which the department contracts pursuant to subdivision (b).

(D) One representative of a nonprofit organization devoted to traffic safety.

(E) One representative of the Judicial Council.

(F) One representative of an association of police officers in the County of Los Angeles.

(G) One representative of the California Association of Highway Patrolmen.

(H) One representative with expertise in the area of traffic safety research from a public or private university.

(2) Members of the committee shall serve without compensation and shall not be reimbursed for any expenses by the state. The department shall supply the committee with the necessary facilities and support.

(3) The committee shall review and recommend to the department the methodology for the conduct of the study and facilitate the operations of the contracting motor club pursuant to this section. The department shall adopt the methodology for the conduct of the study not later than July 1, 1991. The contracting motor club shall follow the methodology adopted by the department, and shall regularly report to the committee and the department on the progress of the study.

(d) The department shall transmit a copy of the study to the Legislature on or before January 1, 1994.

(e) Any person who willfully fails to comply with any requirement imposed pursuant to this section is guilty of a violation of subdivision (e) of Section 42005.

(f) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 3. Section 42005 of the Vehicle Code is amended to read:

42005. (a) The court may order any person convicted of a traffic violation to attend a traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5.

(b) In lieu of adjudicating a traffic offense, and with the consent of the defendant, or after conviction of a traffic offense, the court may order any person issued a notice to appear for a traffic violation to attend a traffic violator school licensed pursuant to Chapter 1.5 (commencing with Section 11200) of Division 5.

(c) Except as otherwise provided in subdivision (d), any person so ordered may choose the traffic violator school the person will attend. The court shall make available to each person subject to such an order the current list of traffic violator schools published by the department pursuant to Section 11205.

(d) In those counties where, prior to January 1, 1985, one or more

individual courts, or the county acting on behalf of one or more individual courts, contracted for the provision of traffic safety instructional services to traffic violators referred by the court pursuant to a pretrial diversion program, the courts may restrict referrals under this section to those schools for traffic violators or licensed driving schools which are under contract with the court or with the county to provide traffic safety instructional services for persons referred pursuant to subdivision (a).

A county described in Section 28023 of the Government Code may continue to provide the program authorized by this section in accordance with the provisions of current and future contracts as may be amended and approved by the individual courts within that county and the county shall be exempt from state regulations relative to maximum classroom attendance.

(e) Any person who willfully fails to comply with a court order to attend traffic violator school is guilty of a misdemeanor.

SEC. 4. Section 42007 of the Vehicle Code is amended to read:

42007. (a) The clerk of the court shall collect a uniform fee not to exceed twenty-four dollars ($24) from every person who is ordered or permitted to attend a traffic violator school pursuant to Section 42005 or who attends any other court-supervised program of traffic safety instruction. The fee shall be in an amount ordered by a majority of the judges, or by the sole judge, of a superior, municipal, or justice court. The amount of the fee shall be sufficient to recover the administrative costs of this section, and the cost incurred by the court in carrying out Section 42005 or in supervising any other similar program, and shall include the following amounts:

(1) In any county in which a fund is established pursuant to Section 76001, 76002, 76004, or 76006 of the Government Code, the sum of one dollar ($1) for each fund so established.

(2) The sum of eight dollars and ninety cents ($8.90) for the issuing local governmental entity as specified in paragraph (2) of subdivision (b).

The fee shall not include the cost, or any part thereof, of traffic safety instruction offered by the school or other program.

(b) Revenues derived from the fee collected under this section shall be allocated as follows:

(1) The amount collected under paragraph (1) of subdivision (a) shall be deposited with the county treasurer and placed in the fund established pursuant to Section 76001, 76002, 76004, or 76006 of the Government Code.

(2) The amount collected under paragraph (2) of subdivision (a) shall be deposited by the clerk in accordance with Section 68084 of the Government Code. The clerk shall report to the county auditor which agency issued the notice to appear for which the fee was collected, and the county shall transfer to the issuing local governmental entity monthly for deposit in the general fund of the entity eight dollars and ninety cents ($8.90) for each notice to appear it issued.

(3) The remaining amount collected under subdivision (a) shall be deposited by the clerk in accordance with Section 68084 of the Government Code. The county board of supervisors may use these funds for any county purpose.

(c) As used in this section, "court-supervised program" includes, but is not limited to, any program of traffic safety instruction the successful completion of which is accepted by the court in lieu of adjudicating a violation of this code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1355

An act to amend Sections 40059, 40160, 40191, 40194, 40403, 40406, 40507, 40900, 40950, 41032, 41033, 41332, 41333, 41420, 41760, 41781, 41782, 41783, 41794, 41820, 41850, 43020, 43021, 43203, 43204, 43210, 43219, 43308, 44001, 44004, 44103, 44150, 44152, 44800, 45003, 45005, 45201, 45300, 45303, 45401, 46101, 46200, 46308, 46806, 48000, 48001, and 48008 of, to amend and renumber Section 44007 of, to add Sections 47901 and 47902 to, to repeal Sections 40160 and 40194 of, to amend the heading of Chapter 3 (commencing with Section 40400) of Part 1 of, to amend the heading of Chapter 13 (commencing with Section 47000) of Part 7 of, and to amend and renumber the heading of Chapter 10 (commencing with Section 45000) of Part 5 of, Division 30 of, the Public Resources Code, and to amend Section 36 of Chapter 1095 of the Statutes of 1989, relating to solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 27, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 40059 of the Public Resources Code is amended to read:

40059. (a) Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following:

(1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of

collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services.

(2) Whether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding, or if, in the opinion of its governing body, the public health, safety, and well-being so require, by partially exclusive or wholly exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding. The authority to provide solid waste handling services may be granted under terms and conditions prescribed by the governing body of the local governmental agency by resolution or ordinance.

(b) Nothing in this division modifies or abrogates in any manner either of the following:

(1) Any franchise previously granted or extended by any county or other local governmental agency.

(2) Any contract, license, or any permit to collect solid waste previously granted or extended by a city, county, or a city and county.

SEC. 2. Section 40160 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is amended to read:

40160. "Operator" means the person to whom the approval to operate a disposal site, transfer or processing station, or collection system is granted.

SEC. 3. Section 40160 of the Public Resources Code, as added by Chapter 1096 of the Statutes of 1989, is repealed.

SEC. 4. Section 40191 of the Public Resources Code is amended to read:

40191. (a) Except as provided in subdivision (b), "solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.

(b) "Solid waste" does not include hazardous waste or low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of the Health and Safety Code, except low-level radioactive waste which is disposed of at a solid waste facility.

SEC. 5. Section 40194 of the Public Resources Code, as added by Chapter 1095 of the Statutes of 1989, is amended to read:

40194. "Solid waste facility" includes a solid waste transfer or processing station, a composting facility, a transformation facility, and a disposal facility.

SEC. 6. Section 40194 of the Public Resources Code, as added by the Chapter 1096 of the Statutes of 1989, is repealed.

SEC. 7. The heading of Chapter 3 (commencing with Section 40400) of Part 1 of Division 30 of the Public Resources Code is

amended to read:

CHAPTER 3. INTEGRATED WASTE MANAGEMENT BOARD

SEC. 8. Section 40403 of the Public Resources Code, as amended by Chapter 145 of the Statutes of the 1990, is amended to read:

40403. (a) Except as provided under subdivision (b), no board member may derive any income directly or indirectly, except income from a vested retirement plan, from a person or from an entity subject to regulation by the board or from any organization which actively participates in matters before the board.

(b) No board member appointed pursuant to subdivision (a) of Section 40401 may derive any earned income directly or indirectly from a person or from an entity subject to regulation by the board or from any organization which actively participates in matters before the board. For purposes of this subdivision, "earned income" means wages, salaries, professional fees, directors fees, and other amounts received as compensation for personal services actually rendered, but does not include any amount received as a pension or annuity, dividends, interest, or any other return on a security including proceeds from the sale of a security.

SEC. 9. Section 40406 of the Public Resources Code is amended to read:

40406. (a) Except as provided for the initial board in subdivision (b), each member of the board shall be appointed for a term of four years. A vacancy shall be filled by the appointing power for the unexpired portion of the term in which it occurs.

(b) The terms of the initial members of the board are as follows:

(1) The term of the initial member appointed pursuant to subdivision (a) of Section 40401 ends on January 1, 1992.

(2) The term of the initial member appointed pursuant to subdivision (b) of Section 40401 ends on January 1, 1993.

(3) The term of one of the initial members appointed pursuant to subdivision (c) of Section 40401 ends on January 1, 1996.

(4) The term of one of the initial members appointed pursuant to subdivision (c) of Section 40401 ends on January 1, 1997.

(5) The term of the initial member appointed pursuant to subdivision (d) of Section 40401 ends on January 1, 1995.

(6) The term of the initial members appointed pursuant to subdivision (e) of Section 40401 ends on January 1, 1994.

(c) Notwithstanding subdivision (b) of Section 40404, the initial members appointed by the Governor pursuant to subdivision (c) of Section 40401 are not subject to confirmation by the Senate.

(d) The Governor shall appoint the initial members appointed pursuant to subdivisions (a) and (b) of Section 40401 and transmit the appointment on or before July 1, 1990. The Senate shall confirm or refuse to confirm the appointments made pursuant to subdivision (a) or (b), or both, on or before a date which is 90 days after receipt of the notice of appointment.

(e) If the Senate refuses or fails to confirm the appointments pursuant to subdivision (d), the Governor, on or before a date which is within 20 days after that refusal or failure, shall appoint another person and transmit the appointment and transmit the appointment and the Senate shall confirm or refuse to confirm that appointment on or before a date which is 90 days after receipt of the notice of appointment.

(f) If the Senate takes no action to confirm or refuse to confirm an appointment pursuant to subdivision (d) or (e) on or before January 1, 1991, that appointment is deemed confirmed.

SEC. 10. Section 40507 of the Public Resources Code is amended to read:

40507. The board shall file a biennial report with the Legislature commencing on or before March 31, 1991, and each March 31 of each odd-numbered year thereafter. The report shall summarize progress achieved by the board in implementing programs established pursuant to this division and shall include all of the following:

(a) Procedures for the timely review of county and city source reduction and recycling elements, countywide siting elements, and countywide integrated waste management plans.

(b) Recommendations concerning state actions needed to maintain an efficient and environmentally safe solid waste management infrastructure.

(c) Recommendations for state actions that are needed to improve the implementation of integrated waste management plans at the state and local levels.

(d) The identification of the geographical location of major existing and potential markets for recyclable materials diverted from solid waste landfills and transformation facilities.

(e) Specific market development strategies and a schedule of proposed market development activities to properly sequence market expansion to prevent an oversupply of recovered material.

(f) Recommendations for public education and information activities needed to promote the reduction and recycling of solid waste.

SEC. 11. Section 40900 of the Public Resources Code, as amended by Chapter 145 of the Statutes of 1990, is amended to read:

40900. (a) The Legislature finds that integrated waste management plans prepared and adopted by local agencies shall conform, to the maximum extent possible to the policies and goals established under Article 1 (commencing with Section 40000) and Article 2 (commencing with Section 40050) of Chapter 1 of Part 1.

(b) The Legislature finds that decisions involving the establishment or expansion of solid waste facilities should be guided by an effective planning process, including meaningful public and private solid waste industry participation.

(c) The Legislature declares that it is the policy of the state and the intent of the Legislature that each state, regional, and local agency concerned with the solid waste facility planning and siting

process involve the public through public hearings and informative meetings and that, at those hearings and other public forums, the public be granted the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(d) The Legislature further declares that it is the policy of the state and the intent of the Legislature to foster and encourage private solid waste enterprises. In furtherance of that policy, it is the intent of the Legislature that each state, regional, and local agency concerned with the solid waste facility planning and siting process involve the private solid waste industry.

SEC. 12. Section 40950 of the Public Resources Code is amended to read:

40950. (a) On or before March 1, 1990, and every five years thereafter, each county, which is not a city and county, shall convene a task force to assist in coordinating the development of city source reduction and recycling elements prepared pursuant to Chapter 2 (commencing with Section 41000), the county source reduction and recycling element prepared pursuant to Chapter 3 (commencing with Section 41300), and to assist in the preparation of the countywide siting element prepared pursuant to Chapter 4 (commencing with Section 41700).

(b) The membership of the task force shall be determined by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which case the membership of the task force is subject to approval of the city which contains the majority of the population of the incorporated area of the county. The task force may include representatives of the solid waste industry, environmental organizations, general public, special districts, and affected governmental agencies.

(c) To ensure a coordinated and cost-effective regional recycling system, the task force shall do all of the following:

(1) Identify solid waste management issues of countywide or regional concern.

(2) Determine the need for solid waste collection and transfer systems, processing facilities, and marketing strategies that can serve more than one local jurisdiction within the region.

(3) Facilitate the development of multijurisdictional arrangements for the marketing of recyclable materials.

(4) To the extent possible, facilitate resolution of conflicts and inconsistencies between or among city source reduction and recycling elements.

(d) The task force shall develop goals, policies, and procedures which are consistent with guidelines and regulations adopted by the board, to guide the development of the siting element of the countywide integrated waste management plan.

SEC. 13. Section 41032 of the Public Resources Code is amended to read:

41032. For the first revision, and any subsequent revision, of a source reduction and recycling element of a countywide integrated waste management plan which is required to be submitted to the board pursuant to Section 41770, the city waste characterization component shall identify the constituent materials which compose solid waste generated within the area affected by the city source reduction and recycling element. The information shall be statistically representative of the solid waste generated within the jurisdiction of the city and shall reflect seasonal variations. The constituent materials shall be identified by volume, percentage in weight, or its volumetric equivalent, material type, and source of generation, which includes residential, commercial, industrial, governmental, or other sources.

SEC. 14. Section 41033 of the Public Resources Code is amended to read:

41033. Any waste characterization component prepared by a city pursuant to Section 40132, and any other information submitted by a city to the board on the quantities of solid waste generated, diverted, and disposed of, shall include data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed of, to enable the board, to the maximum extent possible, to accurately measure the diversion requirements established under paragraph (2) of subdivision (a) of Section 41780.

SEC. 15. Section 41332 of the Public Resources Code is amended to read:

41332. For the first revision, and any subsequent revision, of a source reduction and recycling element of a countywide integrated waste management plan which is required to be submitted to the board pursuant to Section 41770, the county waste characterization component shall identify the constituent materials which compose solid waste generated within the area affected by the county source reduction and recycling element. The information shall be statistically representative of the solid waste generated within the jurisdiction of the county and shall reflect seasonal variations. The constituent materials shall be identified by volume, percentage in weight, or its volumetric equivalent, material type, and source of generation, which includes residential, commercial, industrial, governmental, or other sources.

SEC. 16. Section 41333 of the Public Resources Code is amended to read:

41333. Any waste characterization component prepared by a county pursuant to Section 41332, and any other information submitted by a county to the board on the quantities of solid waste generated, diverted, and disposed of, shall include data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed of, to enable the board, to the maximum extent possible, to accurately measure the diversion requirements established under paragraph (2) of subdivision (a) of Section 41780.

SEC. 17. Section 41420 of the Public Resources Code is amended

to read:

41420. The county education and public information component shall describe to the board how the county will educate and inform its citizens about the source reduction, recycling, and composting programs.

SEC. 18. Section 41760 of the Public Resources Code is amended to read:

41760. The countywide integrated waste management plan and any amendments thereto, excepting a source reduction and recycling element prepared by a city, county, or city and county shall be approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated areas of the county, except in those counties which have only two cities, in which case the plan is subject to the approval of the city which contains a majority of the population of the incorporated areas of the county. Each city shall act upon the plan and any proposed amendment within 90 days after receipt of the amendment. If a city fails to act upon the plan or the proposed amendment within 90 days after receiving the plan or the amendment, the city shall be deemed to have approved the plan or the amendment as submitted.

SEC. 19. Section 41781 of the Public Resources Code, as amended by Section 44 of Chapter 145 of the Statutes of 1990, is amended to read:

41781. (a) For the purpose of determining the base amount of solid waste from which source reduction, recycling, and composting levels shall be calculated, "solid waste" includes only the following:

(1) Materials in the waste stream generated within a local agency's jurisdiction, the types and quantities of which were disposed of at a permitted disposal facility as of January 1, 1990. Nothing in this section requires local agencies to perform waste characterization in addition to the waste characterization requirements established under Sections 41030, 41031, 41331, and 41332.

(2) The amount of solid waste diverted from a landfill or transformation facility through source reduction, recycling, or composting.

(b) For the purposes of this section, "solid waste" does not include any of the following:

(1) Agricultural wastes, except agricultural wastes which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled, composed, or reused.

(2) Inert solids, including inert solids used for structural fill, except inert solids which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled or reused for paving materials or other construction-related materials.

(3) Scrap metals, except scrap metals which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted,

and which are recycled or reused.

(4) Discarded, white-coated major appliances, except those discarded, white-coated major appliances which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled, or refurbished and reused.

(5) Sludge.

(6) Another waste product which would not normally be disposed of at a landfill or transformation facility.

(c) For the purposes of this chapter, the amount of solid waste from which the required reductions are measured shall be the amount of solid waste existing on January 1, 1990, with future adjustments for increases or decreases in the quantity of waste caused only by changes in population and changes in the number or size of governmental, industrial, or commercial operations in the jurisdiction.

(d) For the purpose of determining recycling levels required pursuant to this article, counties and cities shall include all existing residential, commercial, and industrial source reduction, recycling, and composting activities that divert solid waste from solid waste landfills and transformation facilities.

(e) On or before March 1, 1991, the board, in consultation and with the cooperation of the state water board and the State Department of Health Services, shall prepare and submit to the Legislature and the Governor a report on whether or not to include sludge in the waste diversion requirements established under Section 41780. The report shall include, but is not limited to, all of the following:

(1) A description and evaluation of the various options for disposal and reuse of sludge, including, but not limited to, composting, cocomposting, land application, incineration, ocean disposal, and landfill disposal.

(2) An evaluation of the environmental impacts of the various disposal and reuse options, including, but not limited to, impacts on surface, marine, and ground water quality and impacts on air quality.

(3) An evaluation of the public health impacts of the various disposal and reuse options, including impacts from ingestion of, and skin contact with, sludge.

(4) An evaluation of the adequacy of existing federal and state statutes and regulatory programs designed to regulate sludge disposal and reuse, including, but not limited to, adequacy of current funding levels for regulatory programs.

(5) Recommendations on the best available methods to dispose or reuse sludge to ensure the maximum protection of public health and the environment.

(f) This section shall remain in effect until October 1, 1991, and as of that date is repealed.

SEC. 20. Section 41781 of the Public Resources Code, as added by Section 45 of Chapter 145 of the Statutes of 1990, is amended to read:

41781. (a) For the purpose of determining the base rate of solid

waste from which source reduction, recycling, and composting levels shall be calculated, "solid waste" includes only the following:

(1) Materials in the waste stream generated within a local agency's jurisdiction, the types and quantities of which were disposed of at a permitted disposal facility as of January 1, 1990. Nothing in this section requires local agencies to perform waste characterization in addition to the waste characterization requirements established under Sections 41030, 41031, 41331, and 41332.

(2) The amount of solid waste diverted from a landfill or transformation facility through source reduction, recycling, or composting.

(b) For the purposes of this section, "solid waste" does not include any of the following:

(1) Agricultural wastes, except agricultural wastes which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled, composted, or reused.

(2) Inert solids, including inert solids used for structural fill, except inert solids which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled or reused for paving materials or other construction-related materials.

(3) Scrap metals, except scrap metals which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled or reused.

(4) Discarded, white-coated major appliances, except those discarded, white-coated major appliances which were disposed of at a permitted disposal facility as of January 1, 1990, which are diverted, and which are recycled, or refurbished and reused.

(5) Another waste product which would not normally be disposed of at a landfill or transformation facility.

(c) For the purposes of this chapter, the amount of solid waste from which the required reductions are measured shall be the amount of solid waste existing on January 1, 1990, with future adjustments for increases or decreases in the quantity of waste caused only by changes in population or changes in the number or size of governmental, industrial, or commercial operations in the jurisdiction.

(d) For the purpose of determining recycling levels required pursuant to this article, counties and cities shall include all existing residential, commercial, and industrial source reduction, recycling, and composting activities that divert solid waste from solid waste landfills and transformation facilities.

(e) This section shall become operative on October 1, 1991.

SEC. 21. Section 41782 of the Public Resources Code is amended to read:

41782. The board may provide a reduction in the requirements specified in Section 41780 if the city or county demonstrates, and the board concurs, based upon substantial evidence in the record, that

achievement of the requirements of Section 41780 is not feasible due to both of the following:

(1) The small geographic size or low population density of a city or county.

(2) The small quantity of solid waste generated within the city or county.

The board shall establish alternative, but less comprehensive, planning requirements for those counties or cities which will ensure compliance with this division.

SEC. 22. Section 41783 of the Public Resources Code is amended to read:

41783. For any city or county source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent source reduction and recycling requirement established under Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, only if all of the following conditions are met:

(a) The transformation project has complied with Sections 21151.1 and 41150 of this code and Section 42315 of the Health and Safety Code.

(b) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(c) The ash or other residue generated from the transformation project is routinely tested at least once a month, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(d) The board holds a public hearing in the city or county within which a transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(1) The city or county is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(2) The transformation project will not adversely affect public health and the environment.

SEC. 23. Section 41794 of the Public Resources Code is amended to read:

41794. Any city may submit its city source reduction and recycling element to the board for review before the dates in the schedule in Section 41791.

SEC. 24. Section 41820 of the Public Resources Code is amended to read:

41820. The board may grant a one-year time extension from the requirements of Section 41780 to any city or county if the following conditions are met:

(a) The board adopts written findings, based upon substantial evidence in the record, that adverse market conditions beyond the

control of city or county prevent the city or county from meeting the requirements of Section 41780.

(b) The city or county submits a plan of correction which demonstrates how the city or county will meet the requirements of Section 41780 before the time extension expires, which includes the source reduction, recycling, or composting steps the city or county will implement, and which states how these programs will be funded.

(c) The city or county demonstrates that it is achieving the maximum feasible amount of source reduction, recycling, and composting of solid waste within its jurisdiction.

SEC. 25. Section 41850 of the Public Resources Code is amended to read:

41850. (a) If, after holding the public hearing and issuing an order of compliance pursuant to Section 41825, the board finds that the county or city and county has failed to implement its source reduction and recycling element, the board may impose administrative civil penalties of up to ten thousand dollars ($10,000) per day until the city or county implements the element.

(b) In determining the amount of any penalties imposed under this section, the board shall consider only those relevant circumstances which have prevented a city or county from meeting the requirements of this division, including the requirements established under paragraphs (1) and (2) of subdivision (a) of Section 41780, including, but not limited to, all of the following:

(1) Natural disasters.

(2) Budgetary conditions within a city or county which could not be remedied by the imposition or adjustment of solid waste fees.

(3) Work stoppages which directly prevent a city or county from implementing its source reduction and recycling element.

(c) In addition, the board shall consider all of the following:

(1) The extent to which a city or county has made good faith efforts to implement its source reduction and recycling element.

(2) The extent to which a city or county has implemented additional source reduction, recycling, and composting activities to comply with the requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(3) The extent to which a city or county is meeting the requirements established under paragraphs (1) and (2) of subdivision (a) of Section 41780.

SEC. 25.5. Section 41850 of the Public Resources Code is amended to read:

41850. (a) If, after holding the public hearing and issuing an order of compliance pursuant to Section 41825, the board finds that the county or city and county has failed to implement its source reduction and recycling or household hazardous waste elements, the board may impose administrative civil penalties of up to ten thousand dollars ($10,000) per day until the city or county implements the element.

(b) In determining the amount of any penalties imposed under

this section, the board shall consider only those relevant circumstances which have prevented a city or county from meeting the requirements of this division, including the requirements established under paragraphs (1) and (2) of subdivision (a) of Section 41780, including, but not limited to, all of the following:

(1) Natural disasters.

(2) Budgetary conditions within a city or county which could not be remedied by the imposition or adjustment of solid waste fees.

(3) Work stoppages which directly prevent a city or county from implementing its source reduction and recycling element.

(c) In addition, the board shall consider all of the following:

(1) The extent to which a city or county has made good faith efforts to implement its source reduction and recycling element.

(2) The extent to which a city or county has implemented additional source reduction, recycling, and composting activities to comply with the requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(3) The extent to which a city or county is meeting the requirements established under paragraphs (1) and (2) of subdivision (a) of Section 41780.

SEC. 26. Section 43020 of the Public Resources Code is amended to read:

43020. The board shall adopt and revise regulations which set forth minimum standards for solid waste handling, transfer, composting, transformation, and disposal for the protection of air, water, and land from pollution, in accordance with this division, and Section 4520 and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The board shall consider any recommendations of the State Air Resources Board for the prevention of air pollution and any recommendations of the state water board for the prevention of water pollution.

SEC. 27. Section 43021 of the Public Resources Code is amended to read:

43021. Regulations shall include standards for the design, operation, maintenance, and ultimate reuse of solid waste facilities, but shall not include aspects of solid waste handling or disposal which are solely of local concern.

SEC. 28. Section 43203 of the Public Resources Code is amended to read:

43203. The designation of the enforcement agency shall be made by any one of the following procedures:

(a) The board of supervisors of the county may designate the enforcement agency to carry out this chapter in the county. The designation is subject to the approval by a majority of the cities within the county which contain a majority of the population of the incorporated areas of the county except in those counties which have only two cities in which case the designation is subject to approval by the city which contains the majority of the population of the incorporated area of the county.

(b) The county and the cities within the county may enter into a joint exercise of powers agreement pursuant to Section 6500 of the Government Code for the purpose of establishing an enforcement agency to carry out this chapter in the jurisdiction of the joint powers agency.

(c) A city council may designate an enforcement agency to carry out this chapter in the city.

(d) The board of supervisors of the county may designate an enforcement agency to carry out this chapter in the unincorporated areas of that county.

SEC. 29. Section 43204 of the Public Resources Code is amended to read:

43204. No enforcement agency may exercise the powers and duties of an enforcement agency until the designation is approved by the board. After August 1, 1992, the board shall not approve a designation unless it finds that the designated enforcement agency is capable of fulfilling its responsibilities under the enforcement program and meets the certification requirements adopted by the board pursuant to Section 43200.

SEC. 30. Section 43210 of the Public Resources Code is amended to read:

43210. For those facilities which accept only hazardous wastes, or which accept only low-level radioactive wastes, or facilities which only accept both, and to which the provisions of Chapter 6.5 (commencing with Section 25100) or Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code apply, the board and the enforcement agency have no enforcement or regulatory authority. All enforcement activities for the facilities relative to the control of hazardous wastes or low-level radioactive wastes shall be performed by the State Department of Health Services pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 or Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code.

SEC. 31. Section 43219 of the Public Resources Code is amended to read:

43219. (a) The board may, at its discretion, conduct inspections and investigations of solid waste facilities in order to ensure compliance with this division.

(b) The board, in conjunction with an inspection conducted by the enforcement agency, shall conduct each year at least one inspection of each solid waste facility in the state. A written inspection report shall be prepared and submitted within 30 days of the inspection to the enforcement agency.

(c) If the board identifies significant violations of state minimum requirements that were not identified and resolved through previous inspections by the enforcement agency, the board shall conduct a performance review of the enforcement agency within 120 days, prepare a written performance report within 60 days of the review, and require the submission of a plan of correction by the

enforcement agency within 90 days of the report.

(d) The board shall withdraw an enforcement agency's designation pursuant to Section 43215 if it determines the enforcement agency has failed to submit an adequate plan of correction or has failed to implement the plan.

SEC. 32. Section 43308 of the Public Resources Code is amended to read:

43308. For those facilities which accept only hazardous wastes and to which Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code applies, or which accept only low-level radioactive wastes and to which Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code applies, or for those facilities which accept both, the board shall have no enforcement or regulatory authority. Except as otherwise provided in Section 40052, all enforcement activities for those facilities relative to the control of hazardous wastes or low-level radioactive wastes shall be performed by the State Department of Health Services pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 or pursuant to Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code.

SEC. 33. Section 43308 of the Public Resources Code is amended to read:

43308. For those facilities which accept only hazardous wastes and to which Chapter 6.1 (commencing with Section 25015) and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code applies, or which accept only low-level radioactive wastes and to which Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code applies, or for those facilities which accept both, the board shall have no enforcement or regulatory authority. Except as otherwise provided in Section 40052, all enforcement activities for those facilities relative to the control of hazardous wastes or low-level radioactive wastes shall be performed by the State Department of Health Services pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 or pursuant to Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code.

SEC. 34. Section 44001 of the Public Resources Code is amended to read:

44001. Any person who proposes to become an operator of a solid waste facility shall file with the enforcement agency having jurisdiction over the facility, or the board if there is no designated and certified enforcement agency, an application for a solid waste facilities permit at least 120 days in advance of the date on which it is desired to commence operation.

SEC. 35. Section 44004 of the Public Resources Code is amended to read:

44004. (a) No operator of a solid waste facility shall make a significant change in the design or operation of any solid waste facility except in conformance with the terms and conditions in an

approved solid waste facilities permit.

(b) If the operator wishes to modify the design or operation of a solid waste facility, the operator shall file an application for revision of the existing solid waste facilities permit with the enforcement agency. The application shall be filed at least 120 days in advance of the date when the proposed modification is to take place.

(c) Under circumstances which present an immediate danger to public health, as determined by the enforcement agency, the 120-day filing period may be waived.

SEC. 36. Section 44007, immediately following Section 45006, of the Public Resources Code is amended and renumbered to read:

45007. (a) If the solid waste is cleaned up, the effects thereof abated, or other necessary remedial action is taken by any governmental agency pursuant to Section 45001 or 45004, any person to whom an order pursuant to Section 45000 was issued is liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the operation, abating the effects thereof, or taking other remedial action.

(b) The amount of those costs is recoverable in a civil action by, and shall be paid to, that governmental agency together with the costs of suit incurred. From any available money, the governmental agency shall reimburse the board to the extent of the board's contribution.

SEC. 37. Section 44103 of the Public Resources Code is amended to read:

44103. (a) For those facilities which accept only hazardous wastes, or which accept only low-level radioactive wastes, or which accept both, a solid waste facilities permit issued by the enforcement agency is not required. A single hazardous waste facilities permit or low-level radioactive waste facilities permit issued by the State Department of Health Services pursuant to Article 9 (commencing with Section 25200) of Chapter 6.5 or Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code shall be the only waste facilities permit or permits necessary for the use and operation of hazardous waste or low-level radioactive waste disposal facilities.

(b) For those facilities which accept both hazardous wastes and other solid wastes, two permits shall be required, as follows:

(1) The hazardous waste facilities permit issued by the State Department of Health Services pursuant to Article 9 (commencing with Section 25200) of Division 20 of the Health and Safety Code.

(2) The solid waste facilities permit issued by the enforcement agency pursuant to this chapter.

(c) Nothing in this section limits or supersedes any other permit or licensing requirements imposed by other provisions of law.

SEC. 38. Section 44150 of the Public Resources Code is amended to read:

44150. (a) The enforcement agency shall not issue or revise a solid waste facilities permit for any project which proposes to use

transformation, as defined in Section 40201, unless the project complies with all of the following conditions:

(1) The proposed project meets all of the requirements specified in Section 44017.

(2) The proposed project is consistent with state solid waste management policy as set forth in Section 40051.

(3) The proposed project has a defined source of waste, including waste available from existing solid waste transfer and processing stations.

(4) The proposed project is guaranteed, by contract or other commitments, more than sufficient quantities of waste to maintain the project's economic feasibility for the life of the bonded indebtedness of the project. This guarantee shall not include any materials which will be recycled pursuant to paragraph (5).

(5) The proposed project, and any contracts or commitments the project has entered into for the provision of waste, uses front-end recycling methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(6) If the proposed project is a thermal powerplant, the thermal powerplant has been specifically included in an adopted and approved revision of the plan prepared pursuant to Chapter 4 (commencing with Section 41700) of Part 2.

(7) The ash or other residue generated from the transformation project is routinely tested at least once a month, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a Class 1 hazardous waste disposal facility.

(b) Facilities for the recovery of methane gas are not subject to this section.

SEC. 39. Section 44152 of the Public Resources Code is amended to read:

44152. No enforcement agency shall issue or revise a permit for a solid waste facility which exclusively uses transformation until the board has concluded in writing that the proposed permit is consistent with the state's minimum standards for solid waste facilities.

SEC. 40. Section 44800 of the Public Resources Code is amended to read:

44800. All hearings required to be conducted under this chapter or Chapter 1 (commencing with Section 45000) of Part 5 shall be conducted by a hearing panel of three persons appointed by the chairperson of the local governing body of the enforcement agency under either of the following alternatives:

(a) The local governing body may appoint itself as the hearing panel.

(b) The local governing body may appoint an independent hearing panel.

SEC. 41. The heading of Chapter 10 (commencing with Section 45000) of Part 5 of Division 30 of the Public Resources Code is

amended and renumbered to read:

CHAPTER 1. ADMINISTRATIVE ENFORCEMENT

SEC. 42. Section 45003 of the Public Resources Code is amended to read:

45003. After receiving a request pursuant to Section 45002, the board may hold a hearing pursuant to Article 3 (commencing with Section 44800) of Chapter 4 of Part 4 on the matter and thereafter deny, grant, or grant in part the request.

SEC. 43. Section 45005 of the Public Resources Code is amended to read:

45005. (a) Any work performed pursuant to Section 45001 or 45004 is in default of, or in addition to, remedial work by the operator or other persons, and the work may be performed regardless of whether injunctive relief is being sought by any party.

(b) The board may perform the work itself, or have the work performed by, or in cooperation with, any other governmental agency or private contractor, and may use rented tools or equipment, either with or without operators furnished.

SEC. 44. Section 45201 of the Public Resources Code is amended to read:

45201. Any attorney authorized to act on behalf of the board shall petition the superior court to impose, assess, and recover the civil penalties authorized by Section 45200. Funds collected shall be paid to the Solid Waste Management Fund.

SEC. 45. Section 45300 of the Public Resources Code is amended to read:

45300. (a) Whenever the enforcement agency finds that any person is operating a solid waste facility or proposes to operate a solid waste facility which causes or threatens to cause a condition of hazard, pollution, or nuisance constituting an emergency requiring immediate action to protect the public health, welfare, or safety, the enforcement agency may issue a cease and desist or cleanup order under this article. If the enforcement agency fails to issue an order the board, after notification of the enforcement agency, may do so.

(b) The enforcement agency may, whenever it determines that the operation of a disposal site is causing or threatening to cause a condition of hazard, pollution, or nuisance including a hazard, pollution, or nuisance, due to the migration of methane gas or any solid waste, require the owner or operator of the disposal site to take corrective action as necessary to abate a nuisance or protect human health and the environment.

SEC. 46. Section 45303 of the Public Resources Code is amended to read:

45303. If any board or agency specified in Section 45301 receives a complaint concerning a solid waste disposal site and the board or agency determines that it is not authorized to take action concerning the complaint, the board or agency shall refer the complaint within

10 days of receipt to another state agency which it determines is authorized to take action.

SEC. 47. Section 45401 of the Public Resources Code is amended to read:

45401. (a) Upon the request of the enforcement agency, or upon its own initiative, the board may, after notification of the enforcement agency, require the owner or operator of a solid waste landfill to do either or both of the following:

(1) Take corrective action as necessary to abate a nuisance or protect human health and the environment.

(2) Prepare and implement a closure plan and postclosure maintenance plan.

(b) The board may expend funds available to it from the Solid Waste Disposal Site Cleanup and Maintenance Account in the Solid Waste Management Fund in preparing and issuing an order under this subdivision.

SEC. 48. Section 46101 of the Public Resources Code is amended to read:

46101. The committee is composed of seven members, as follows:

(a) The State Director of Health Services, or a designee of the director.

(b) The Chairperson of the State Water Resources Control Board, or a designee of the chairperson.

(c) The Chairperson of the State Air Resources Board, or a designee of the chairperson.

(d) The chairperson of the board, or a designee of the chairperson.

(e) A member appointed by the Senate Committee on Rules.

(f) A member appointed by the Speaker of the Assembly.

(g) A member, who shall be a county health officer, appointed by the Governor.

SEC. 49. Section 46200 of the Public Resources Code is amended to read:

46200. The board shall administer this part and may exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon the board pursuant to this part.

SEC. 50. Section 46308 of the Public Resources Code is amended to read:

46308. Applicants for loan guarantees shall submit a nonrefundable application fee in an amount determined by the board and payable to the board, for deposit in the account, to defray the board's expenses in reviewing the application, including a check on the applicant's credit rating.

SEC. 51. Section 46806 of the Public Resources Code is amended to read:

46806. All money in the account is available, upon appropriation by the Legislature, only for purposes of this part and for the purposes of Article 4 (commencing with Section 45400) of Chapter 1 of Part 5.

SEC. 52. The heading of Chapter 13 (commencing with Section 47000) of Part 7 of Division 30 of the Public Resources Code, as amended by Chapter 35 of the Statutes of 1990, is amended to read:

CHAPTER 1. HOUSEHOLD HAZARDOUS SUBSTANCE INFORMATION AND COLLECTION

SEC. 53. Section 47901 is added to the Public Resources Code, to read:

47901. All revenues received by the board shall be deposited in the specified account in the fund. Any revenue received by the board for which no account is specified shall be deposited in the Integrated Waste Management Account created by Section 48001 in the fund.

SEC. 54. Section 47902 is added to the Public Resources Code, to read:

47902. Notwithstanding Section 16475 of the Government Code, all interest earned and other increment derived from the investment of revenues in an account in the Solid Waste Management Fund shall be deposited in that account.

SEC. 55. Section 48000 of the Public Resources Code, as amended by Chapter 145 of the Statutes of 1990, is amended to read:

48000. (a) Each operator of a solid waste landfill required to have a solid waste facility permit shall, in addition to the fee imposed pursuant to Section 46801, pay a fee quarterly to the State Board of Equalization based on all solid waste disposed of at each disposal site on or after January 1, 1990.

(b) The fee shall be based on the amount, by weight or volumetric equivalent, as determined by the board, of solid waste disposed of at each disposal site, and is due within 25 days of the end of the calendar quarter. The first payment shall be received by the State Board of Equalization on or before April 25, 1990.

(c) For purposes of collection of the fees established pursuant to subdivision (a) during the 1990 calendar year, the state board shall bill operators which utilize parcel taxes, dwelling fees, or land use fees to fund solid waste services at the close of the third calendar quarter. The payment for the first three quarters of the 1990 calendar year shall be made within 25 days of the third calendar quarter. Thereafter, these operators shall remit payment to the state board pursuant to subdivision (b).

(d) The fee shall be set initially at fifty cents ($.50) per ton for waste disposed of during the period of January 1, 1990, through June 30, 1990. The fee for waste disposed of during the period of July 1, 1990, through June 30, 1991, shall be set by the board at an amount sufficient to generate revenues equivalent to the approved budget for the 1990–91 fiscal year, including a prudent reserve, but shall not exceed seventy-five cents ($.75) per ton. The fee for waste disposed of on July 1, 1991, and thereafter, shall be set annually by the board at an amount sufficient to generate revenues equivalent to the

approved budget for that fiscal year, including a prudent reserve, but shall not exceed one dollar ($1) per ton.

SEC. 56. Section 48001 of the Public Resources Code is amended to read:

48001. The revenue from the fees paid pursuant to Section 48000 shall, after payment of refunds and administrative costs of collection, be deposited in the Integrated Waste Management Account, which is hereby created within the Solid Waste Management Fund.

SEC. 57. Section 48008 of the Public Resources Code is amended to read:

48008. (a) Any operator of a solid waste landfill that pays a fee pursuant to this chapter may impose on its users an administrative fee of not more than 5 percent of the fees paid to the State Board of Equalization during the previous quarter pursuant to Section 48000.

(b) Administrative fees imposed pursuant to subdivision (a) shall reflect, to the extent feasible, the actual costs of collecting and accounting for fees paid to the State Board of Equalization.

SEC. 58. Section 36 of Chapter 1095 of the Statutes of 1989 is amended to read:

Sec. 36. The California Integrated Waste Management Board may use not more than six hundred thousand dollars ($600,000) in the 1989–90 fiscal year and not more than one million two hundred thousand dollars ($1,200,000) in the 1990–91 fiscal year from the Solid Waste Disposal Site Cleanup and Maintenance Account in the General Fund, if those respective amounts are appropriated in the Budget Act for those fiscal years from the Solid Waste Disposal Site Cleanup and Maintenance Account in the General Fund, for initial startup costs incurred pursuant to Chapter 3 (commencing with Section 40400) and Chapter 4 (commencing with Section 40500) of Part 1 of Division 30 of the Public Resources Code. Any funds made available from the Solid Waste Disposal Site Cleanup and Maintenance Account for the purposes specified in this section shall be a loan, which shall be repaid to the account, with interest calculated at the rate the funds would have earned in the Pooled Money Investment Account as fee revenue becomes available.

SEC. 59. Section 25.5 of this bill shall become operative only if AB 2707 of the 1989–90 Regular Session adds Chapter 3.5 to Part 2 of Division 30 of the Public Resources Code and both this bill and AB 2707 are enacted, in which case Section 25 of this bill shall not become operative.

SEC. 60. Section 33 of this bill incorporates amendments to Section 43308 of the Public Resources Code proposed by both this bill and AB 1641. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, but this bill becomes operative first, (2) each bill amends Section 43308 of the Public Resources Code, and (3) this bill is enacted after AB 1641, in which case Section 43308 of the Public Resources Code, as amended by Section 32 of this bill, shall remain operative only until the operative date of AB 1641, at which time Section 33 of this bill shall

become operative.

SEC. 61. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 62. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the safe management of solid waste, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1356

An act to add Article 14.7 (commencing with Section 1067) to Chapter 1 of Part 2 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Article 14.7 (commencing with Section 1067) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 14.7. California Life Insurance Guaranty Association

1067. This article shall be known and may be cited as the California Life Insurance Guaranty Association Act.

1067.01. The purpose of this article is as follows:

(a) To protect, subject to certain limitations, the persons specified in Section 1067.02 against failure in the performance of contractual obligations, under life insurance policies and annuity contracts specified in Section 1067.02, because of the impairment or insolvency of the member insurer that issued the policies or contracts.

(b) To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited herein, and members of the association are subject to assessment to provide funds to carry out the purposes of the article.

1067.02. (a) This article shall provide coverage for the policies and contracts specified in subdivision (b) to the following:

(1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under paragraph (2).

(2) To persons who are owners of or certificate holders under those policies or contracts, and who either:

(A) Are residents of this state.

(B) Are not residents, but only under all of the following conditions:

(i) The insurers that issued the policies or contracts are domiciled in this state.

(ii) The insurers never held a license or certificate of authority in the states in which the persons reside.

(iii) The states in which the persons reside have associations similar to the association created by this article.

(iv) The persons are not eligible for coverage by those associations.

(b) (1) This article shall provide coverage to the persons specified in subdivision (a) for direct, nongroup life, annuity, and supplemental policies or contracts and for certificates under direct group policies and contracts, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, structured settlement agreements, allocated annuity contracts, and any immediate or deferred annuity contracts.

(2) This article shall not provide coverage for any of the following:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder or contractholder.

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(C) Any portion of a policy or contract to the extent that the rate of interest on which it is based exceeds either or both of the following:

(i) The extent to which the rate of interest, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated.

(ii) The extent to which the rate of interest, on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average as most recently available, not to go below a minimum of three percentage points.

(D) Guaranteed investment contracts, guaranteed interest contracts, funding agreements, deposit administration contracts and

all other unallocated annuity contracts.

(E) Any plan or program of an employer, association, or similar entity to provide life or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under any of the following:

(i) A multiple employer welfare arrangement as defined in Section 514 of the Employee Retirement Income Security Act of 1974, as amended.

(ii) A minimum premium group insurance plan.

(iii) A stop-loss group insurance plan.

(iv) An administrative services only contract.

(F) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policyholder or contractholder, in connection with the service to or administration of the policy or contract.

(G) Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state.

(H) Any annuity issued by a charitable organization that is duly qualified as such under applicable provisions of the Internal Revenue Code.

(c) The benefits for which the association may become liable shall in no event exceed the lesser of the following:

(1) Eighty percent of the contractual obligations, as modified pursuant to subparagraph (C) of paragraph (2) of subdivision (b), the 80 percent of the contractual obligations measured on the basis of any one life, each individual participant, or any one owner in accordance with the provisions of subparagraphs (A), (B), and (C) of paragraph (2), for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(2) (A) With respect to any one life, regardless of the number of policies or contracts:

(i) Two hundred fifty thousand dollars ($250,000) in life insurance death benefits, but not more than one hundred thousand dollars ($100,000) in net cash surrender and net cash withdrawal values for life insurance.

(ii) One hundred thousand dollars ($100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) However, in no event shall the association be liable to expend more than two hundred fifty thousand dollars ($250,000) in the aggregate with respect to any one individual under subparagraph (A).

(C) With respect to any one owner of those policies or contracts, whether the policyowner is an individual, firm, corporation, or other legal entity, five million dollars ($5,000,000) in benefits, irrespective of the number of the policies and contracts held by the owner.

1067.03. This article shall be liberally construed to effect the purpose under Section 1067.01 which shall constitute an aid and guide to interpretation.

1067.04. As used in this article:

(a) "Account" means either of the two accounts created under Section 1067.05.

(b) "Association" means the California Life Insurance Guaranty Association created under Section 1067.05.

(c) "Commissioner" means the Insurance Commissioner.

(d) "Contractual obligation" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under Section 1067.02.

(e) "Covered policy" means any policy or contract within the scope of this article under Section 1067.02.

(f) "Impaired insurer" means a member insurer which, after the effective date of this article, is not an insolvent insurer, and (1) is deemed by the commissioner to be potentially unable to fulfill its contractual obligations or (2) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(g) "Insolvent insurer" means a member insurer which, after the effective date of this article, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(h) "Member insurer" means any insurer licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under Section 1067.02 and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include any of the following:

(1) A fraternal benefit society.

(2) A mandatory state pooling plan.

(3) A mutual assessment company or any entity that operates on an assessment basis.

(4) An insurance exchange.

(5) A grants and annuities society holding a certificate of authority under Section 11520.

(6) Any entity similar to any of the above.

(i) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(j) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(k) "Premiums" means amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. "Premiums" does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subdivision (b) of Section 1067.02 except that assessable premium shall not be reduced on account of paragraph (2) of subdivision (c) of Section 1067.02 relating to

limitations with respect to any one individual, any one participant, and any one contractholder; provided that "premiums" shall not include any premiums in excess of five million dollars ($5,000,000) with respect to policies and contracts issued to any one owner, whether the policy owner is an individual, firm, corporation, or other legal entity, irrespective of the number of policies and contracts held by the owner.

(*l*) "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.

(m) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

(n) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under that contract or certificate.

1067.05. (a) There is created a nonprofit legal entity to be known as the California Life Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under Section 1067.09 and shall exercise its powers through a board of directors established under Section 1067.06. For purposes of administration and assessment the association shall maintain the following two accounts:

(1) The life insurance account.

(2) The annuity account.

(b) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

1067.06. (a) The board of directors of the association shall consist of nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, the commissioner may appoint the initial members.

(b) In approving selections or in appointing members to the

board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board shall not otherwise be compensated by the association for their services.

1067.07. (a) If a member insurer is an impaired domestic insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner, and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer, do any of the following:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer.

(2) Provide moneys, pledges, notes, guarantees, or other means proper to effectuate paragraph (1) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1).

(3) Loan money to the impaired insurer.

(b) (1) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in paragraph (2), the association shall, in its discretion, either:

(A) Take any of the actions specified in subdivision (a), subject to the conditions therein.

(B) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

(2) The association shall be subject to the requirements of paragraph (1) only if subparagraphs (A) and (B) apply:

(A) The laws of its state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all of those payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations, all of the following apply:

(i) The delinquency proceeding shall not be dismissed.

(ii) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management.

(iii) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored.

(B) Either clause (i) or (ii) applies:

(i) The impaired insurer is a domestic insurer, and it has been

placed under an order of rehabilitation by a court of competent jurisdiction in this state.

(ii) The impaired insurer is a foreign or alien insurer, and all of the following apply:

(I) It has been prohibited from soliciting or accepting new business in this state.

(II) Its certificate of authority has been suspended or revoked in this state.

(III) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.

(c) If a member insurer is an insolvent insurer, the association shall, in its discretion, either do those things described in paragraph (1) or in paragraph (2):

(1) (A) Guaranty, assume, or reinsure, or cause to be guaranteed, assumed or reinsured, the policies or contracts of the insolvent insurer.

(B) Assure payment of the contractual obligations of the insolvent insurer.

(C) Provide those moneys, pledges, guarantees, or other means as are reasonably necessary to discharge the duties.

(2) With respect only to life insurance policies, provide benefits and coverages in accordance with subdivision (d).

(d) When proceeding under subparagraph (B) of paragraph (1) of subdivision (b), or paragraph (2) of subdivision (c), the association shall, with respect to only life insurance policies:

(1) Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer, for claims incurred:

(A) With respect to group policies, not later than the earlier of the next renewal date under the policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies.

(B) With respect to individual policies, not later than the earlier of the next renewal date, if any, under the policies or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to such policies.

(2) Make diligent efforts to provide all known insureds or group policyholders, with respect to group policies, 30 days notice of the termination of the benefits provided.

(3) With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (4), if the insureds had a right under law of the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a

specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(4) (A) In providing the substitute coverage required under paragraph (3), the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(B) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(C) The association may reinsure any alternative or reissued policy.

(5) (A) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(B) Alternative polices shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(C) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(6) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(7) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date that coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

(e) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the association's obligations under the policy or coverage under this article with respect to that policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this article.

(f) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after

the entry of that order.

(g) The protection provided by this article shall not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(h) In carrying out its duties under subdivisions (b) and (c), the association may, subject to approval by the court, do any of the following:

(1) Impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the association's duties under this article, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of the permanent policy or contract liens, to be in the public interest.

(2) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(i) If the association fails to act within a reasonable period of time as provided in subparagraph (B) of paragraph (1) of subdivision (b), and subdivisions (c) and (d), the commissioner shall have the powers and duties of the association under this article with respect to impaired or insolvent insurers.

(j) The association may render assistance and advice to the commissioner, upon his or her request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(k) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this article. That standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(*l*) (1) Any person receiving benefits under this article shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received because of this article, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverages. The association may require an assignment to it of those

rights and cause of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this article upon that person.

(2) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this article.

(3) In addition to paragraphs (1) and (2), the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such policy or contracts.

(m) The association may do any of the following:

(1) Enter into contracts necessary or proper to carry out the provisions and purposes of this article.

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under Section 1067.08 and to settle claims or potential claims against it.

(3) Borrow money to effect the purposes of this article. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(4) Employ or retain an executive director and other persons necessary to handle the financial transactions of the association, and to perform other functions necessary or proper under this article provided that the executive director shall be subject to the approval of the commissioner.

(5) Take legal action necessary to avoid payment of improper claims.

(6) Exercise, for the purposes of this article and to the extent approved by the commissioner, the powers of a domestic life insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this article.

(n) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

1067.08. (a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at 10 percent per annum on and after the due date.

(b) There shall be two assessments, as follows:

(1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of subdivision (e) of Section 1067.11.

Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under Section 1067.07 with regard to an impaired or an insolvent insurer.

(c) (1) The amount of any class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. A non-pro rata assessment shall not exceed two hundred fifty dollars ($250) per member insurer in any one calendar year. The amount of any class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer or policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for those calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this article. Classification of assessments under subdivision (b) and computation of assessments under this subdivision shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which that assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e) (1) The total of all assessments upon a member insurer for either account shall not in any one calendar year exceed one percent of the insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by

this article.

(2) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(f) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

(g) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this article, to consider the amount reasonably necessary to meet its assessment obligations under this article.

(h) The association shall issue to each insurer paying an assessment under this article, other than class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or date of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in the form and for the amount, if any, and period of time as the commissioner may approve.

1067.09. (a) (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or unless he or she has not disapproved it within 30 days.

(2) If the association fails to submit a suitable plan of operation within 120 days following the effective date of this article or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate those reasonable rules necessary or advisable to effectuate the provisions of this article. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this article, do all of the following:

(1) Establish procedures for handling the assets of the association.

(2) Establish the amount and method of reimbursing members of the board of directors under Section 1067.06.

(3) Establish regular places and times for meetings including telephone conference calls of the board of directors.

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(5) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner.

(6) Establish any additional procedures for assessments under Section 1067.08.

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under paragraph (3) of subdivision (m) of Section 1067.07 and Section 1067.08, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. That corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subdivision shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this article.

1067.10. In addition to the duties and powers enumerated elsewhere in this article:

(a) The commissioner shall:

(1) Upon request of the board of directors, provide the association with a statement of the premiums in this and any other appropriate states for each member insurer.

(2) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this article.

(3) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the operation of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. The forfeiture shall not exceed 5 percent of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars ($100) per month.

(c) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if the appeal

is taken within 60 days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(d) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this article.

1067.11. To aid in the detection and prevention of insurer insolvencies or impairments:

(a) It shall be the duty of the commissioner to do the following:

(1) To notify the commissioners of all the other states, territories of the United States, and the District of Columbia when he or she takes any of the following actions against a member insurer:

(A) Revocation of license.

(B) Suspension of license.

(C) Makes any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

The notice shall be mailed to all commissioners within 30 days following the action taken or the date on which the action occurs.

(2) To report to the board of directors when he or she has taken any of the actions set forth in paragraph (1) or has received a report from any other commissioner indicating that any such action has been taken in another state. The report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

(3) To report to the board of directors when he or she has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer.

(4) To furnish to the board of directors the NAIC Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information contained therein shall be kept confidential by the board of directors until that time as it is made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his or her duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(c) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state.

(d) It shall be the duty of the board of directors to notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

(e) The board of directors shall, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within 30 days of the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by persons that the commissioner designates. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subdivision (a).

The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(f) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(g) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing the information that it may have in its possession bearing on the history and causes of the insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by the other associations.

1067.12. (a) Nothing in this article shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under Section 1067.07. Records of the negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent

jurisdiction. Nothing in this subdivision shall limit the duty of the association to render a report of its activities under Section 1067.13.

(c) For the purpose of carrying out its obligations under this article, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to Section 1067.07. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this article. Assets attributable to covered policies, as used in this subdivision, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d) (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In the determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under Section 1067.07 with respect to the insurer have been fully recovered by the association.

(e) (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (2) to (4), inclusive.

(2) No such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the insured at the time the distributions were paid shall be liable up to the amount of distributions he or she received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he or she would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they

shall be jointly and severally liable.

(4) The maximum amount recoverable under this subdivision shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(5) If any person liable under paragraph (3) is insolvent, all its affiliates that controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

1067.13. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, the Governor, and the Legislature each year, not later than 120 days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year.

1067.15. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his or her representatives, for any action or omission by them in the performance of their powers and duties under this article. The immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to that organization and its agents or employees.

1067.16. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed 60 days from the date an order of liquidation, rehabilitation, or conservation is final, to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default the association may apply to have the judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

1067.17. (a) No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the California Life Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the California Life Insurance Guaranty Association Act. Provided, however, that this section shall not apply to the California Life Insurance Guaranty Association or any other entity which does not sell or solicit insurance.

(b) Within 180 days of the effective date of this article, the association shall prepare a summary document describing the

general purposes and current limitations of the article and complying with subdivision (c). This document shall be submitted to the commissioner for approval. Sixty days after receiving approval, no insurer may deliver a policy or contract described in paragraph (1) of subdivision (b) of Section 1067.02 to a policyholder or contractholder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract except if subdivision (d) applies. The document should also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of this document shall not mean that either the policy or the contract or the holder thereof would be covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the association as amendments to the article may require. Failure to receive this document does not give the policyholder, contractholder, certificate holder, or insured any greater rights than those stated in this article.

(c) The document prepared under subdivision (b) shall contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall do all of the following:

(1) State the name and address of the life insurance guaranty association and insurance department.

(2) Prominently warn the policyholder or contractholder that the California Life Insurance Guaranty Association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state.

(3) State that the insurer and its agents are prohibited by law from using the existence of the California Life Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance.

(4) Emphasize that the policyholder or contractholder should not rely on coverage under the California Life Insurance Guaranty Association when selecting an insurer.

(5) Provide other information as directed by the commissioner.

(d) No insurer or agent may deliver a policy or contract described in paragraph (1) of subdivision (b) of Section 1067.02, and excluded under subparagraph (A) of paragraph (2) of subdivision (b) of Section 1067.02 from coverage under this article unless the insurer or agent, prior to or at the time of delivery, gives the policyholder or contractholder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the California Life Insurance Guaranty Association. The commissioner shall by rule specify the form and content of the notice.

1067.18. This article shall not apply to any insurer that is insolvent or impaired, or unable to fulfill its contractual obligations on the effective date of this article.

CHAPTER 1357

An act to amend Sections 798.56 and 798.79 of, and to add Section 798.56a to, the Civil Code, relating to mobilehomes.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 798.56 of the Civil Code is amended to read:

798.56. A tenancy shall be terminated by the management only for one or more of the following reasons:

(a) Failure of the homeowner or resident to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency.

(b) Conduct by the homeowner or resident, upon the park premises, which constitutes a substantial annoyance to other homeowners or residents.

(c) Failure of the homeowner or resident to comply with a reasonable rule or regulation of the park which is part of the rental agreement or any amendment thereto.

No act or omission of the homeowner or resident shall constitute a failure to comply with a reasonable rule or regulation unless and until the management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner or resident has failed to adhere to the rule or regulation within seven days. However, if a homeowner has been given a written notice of an alleged violation of the same rule or regulation on three or more occasions within a 12-month period after the homeowner or resident has violated that rule or regulation, no written notice shall be required for a subsequent violation of the same rule or regulation.

Nothing in this subdivision shall relieve the management from its obligation to demonstrate that a rule or regulation has in fact been violated.

(d) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and provided, that the homeowner shall be given a three-day written notice subsequent to that five-day period to pay the amount due or to vacate the tenancy. The three-day written notice shall be given to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure. A copy of this notice shall be sent to the persons or entities specified in subdivision (b) of Section 798.55 within 10 days after notice is delivered to the homeowner. If the homeowner cures the default, the notice need not be sent. The notice may be given at the same time as the 60 days' notice required for termination of the tenancy.

(2) Payment by the homeowner prior to the expiration of the three-day notice period shall cure a default under this subdivision.

In the event the homeowner does not pay prior to the expiration of the three-day notice period, the homeowner shall remain liable for all payments due up until the time the tenancy is vacated.

(3) Payment by the legal owner, as defined in Section 18005.8 of the Health and Safety Code, any junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, or the registered owner, as defined in Section 18009.5 of the Health and Safety Code, if other than the homeowner, on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner, each junior lienholder, and the registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to that payment.

(4) Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner, any junior lienholder, or the registered owner, if other than the homeowner, as provided by this subdivision, may not be exercised more than twice during a 12-month period.

(5) If a homeowner has been given a three-day notice to pay the amount due or to vacate the tenancy on three or more occasions within the preceding 12-month period, no written three-day notice shall be required in the case of a subsequent nonpayment of rent, utility charges, or reasonable incidental service charges.

In that event the management shall give written notice to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure to remove the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner, each junior lienholder, and the registered owner of the mobilehome, if other than the homeowner, as specified in paragraph (b) of Section 798.55, by certified or registered mail return receipt requested within 10 days after notice is sent to the homeowner.

(e) Condemnation of the park.

(f) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written

notice thereof prior to the inception of his or her tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been granted.

(4) The notice requirements for termination of tenancy set forth in Sections 798.56 and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, which conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

(h) The report required pursuant to subdivisions (b) and (i) of Section 65863.7 of the Government Code shall be given to the homeowners or residents at the same time that notice is required pursuant to subdivision (f) of this section.

SEC. 1.5. Section 798.56 of the Civil Code is amended to read:

798.56. A tenancy shall be terminated by the management only for one or more of the following reasons:

(a) Failure of the homeowner or resident to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency.

(b) Conduct by the homeowner or resident, upon the park premises, which constitutes a substantial annoyance to other homeowners or residents.

(c) Conviction of the homeowner or resident for prostitution or a felony controlled substance offense if the act resulting in the conviction was committed anywhere on the premises of the mobilehome park, including, but not limited to, within the homeowner's mobilehome.

However the tenancy may not be terminated for the reason specified in this subdivision if the person convicted of the offense has permanently vacated, and does not subsequently reoccupy, the mobilehome.

(d) Failure of the homeowner or resident to comply with a reasonable rule or regulation of the park which is part of the rental agreement or any amendment thereto.

No act or omission of the homeowner or resident shall constitute a failure to comply with a reasonable rule or regulation unless and until the management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner or resident has failed to adhere to the rule or regulation within seven days. However, if a homeowner has been given a written notice of an alleged violation of the same rule or regulation on three or more occasions within a 12-month period after the homeowner or resident has violated that rule or regulation, no written notice shall be required for a subsequent violation of the same rule or regulation.

Nothing in this subdivision shall relieve the management from its

obligation to demonstrate that a rule or regulation has in fact been violated.

(e) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and provided, that the homeowner shall be given a three-day written notice subsequent to that five-day period to pay the amount due or to vacate the tenancy. For purposes of this subdivision, the five-day period does not include the date the payment is due. The three-day written notice shall be given to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure. A copy of this notice shall be sent to the persons or entities specified in subdivision (b) of Section 798.55 within 10 days after notice is delivered to the homeowner. If the homeowner cures the default, the notice need not be sent. The notice may be given at the same time as the 60 days' notice required for termination of the tenancy.

(2) Payment by the homeowner prior to the expiration of the three-day notice period shall cure a default under this subdivision. In the event the homeowner does not pay prior to the expiration of the three-day notice period, the homeowner shall remain liable for all payments due up until the time the tenancy is vacated.

(3) Payment by the legal owner, as defined in Section 18005.8 of the Health and Safety Code, any junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, or the registered owner, as defined in Section 18009.5 of the Health and Safety Code, if other than the homeowner, on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner, each junior lienholder, and the registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to that payment.

(4) Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner, any junior lienholder, or the registered owner, if other than the homeowner, as provided by this subdivision, may not be exercised more than twice during a 12-month period.

(5) If a homeowner has been given a three-day notice to pay the amount due or to vacate the tenancy on three or more occasions within the preceding 12-month period, no written three-day notice shall be required in the case of a subsequent nonpayment of rent, utility charges, or reasonable incidental service charges.

In that event the management shall give written notice to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure to remove the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner, each junior lienholder, and the registered owner of the mobilehome, if other than the homeowner, as specified in paragraph (b) of Section 798.55, by certified or registered mail return receipt requested within 10 days after notice is sent to the homeowner.

(f) Condemnation of the park.

(g) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written notice thereof prior to the inception of his or her tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been granted.

(4) The notice requirements for termination of tenancy set forth in Sections 798.56 and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, which conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

(h) The report required pursuant to subdivisions (b) and (i) of Section 65863.7 of the Government Code shall be given to the homeowners or residents at the same time that notice is required pursuant to subdivision (g) of this section.

SEC. 2. Section 798.56a is added to the Civil Code, to read:

798.56a. (a) Within 60 days following receipt, or no later than 65 days after the mailing, of the notice of termination of tenancy for nonpayment of rent or other charges, the legal owner and each junior lienholder shall notify the management in writing of at least one of the following:

(1) Its offer to sell the obligation secured by the mobilehome to the management for the amount specified in its written offer. In that event, the management shall have 15 days following receipt of the offer to accept or reject the offer in writing. If the offer is rejected, the person or entity shall have 10 days in which to exercise one of the other options contained in this section and shall notify management in writing of its choice.

(2) Its intention to foreclose on its security interest in the mobilehome.

(3) Its request that the management pursue the termination of tenancy against the homeowner and its offer to reimburse

management for the reasonable attorney's fees and court costs incurred by the management in that action.

(b) In the event that the legal owner or junior lienholder exercises any option described in paragraph (2) or (3) of subdivision (a), and has the right to sell the mobilehome within the park to a third party in accordance with this article, that person or entity shall have the right to keep the mobilehome on the site within the mobilehome park until it is resold as long as the person or entity performs all of the following acts:

(1) (A) Satisfies, within the time period specified in subdivision (a), all of the homeowner's responsibilities and liabilities owing to the management for the 90 days preceding the mailing of the notice of termination of tenancy and then continue to satisfy them as they accrue from the date of the mailing of that notice until the date the mobilehome is resold.

(B) Performance under this paragraph does not cure the default of the homeowner.

(C) For purposes of this paragraph, the "homeowner's responsibilities and liabilities" means all rents, utilities, reasonable maintenance charges of the mobilehome and its premises, and reasonable maintenance of the mobilehome and its premises pursuant to existing park rules and regulations.

(2) Within the time period specified in subdivision (a), commences all repairs and necessary corrective actions so that the mobilehome complies with park rules and regulations in existence at the time the notice of termination of tenancy was given as well as the health and safety standards specified in Sections 18550, 18552, and 18605 of the Health and Safety Code, and completes these repairs and corrective actions within 90 calendar days of that notice, or before the date the mobilehome is resold, whichever is earlier.

(3) Complies with the requirements of Article 7 (commencing with Section 798.70) as it relates to the transfer of the mobilehome to a third party.

(c) In the event the legal owner or junior lienholder does not respond to the notice provided by management by notifying management in writing of its election pursuant to subdivision (a), or does not satisfy the requirements of subdivision (b), that person or entity shall have no rights to sell the mobilehome within the park to a third party.

(d) In the event the homeowner files for bankruptcy, the periods set forth in this section are tolled until the mobilehome is released from bankruptcy.

(e) Notwithstanding any other provision of law, including, but not limited to, Section 18099.5 of the Health and Safety Code, in the event neither the legal owner nor a junior lienholder, if any, notifies the management of its decision pursuant to subdivision (a) within the period allowed, or performs as agreed within 30 days, the management may either remove the mobilehome from the premises and place it in storage or store it on its site. In this case,

notwithstanding any other provision of law, the management shall have a warehouseman's lien in accordance with Section 7209 of the Commercial Code against the mobilehome for the costs of dismantling and moving, if appropriate, as well as storage, which shall be superior to all other liens, except the lien provided for in Section 18116.1 of the Health and Safety Code, and may enforce the lien pursuant to Section 7210 of the Commercial Code.

(f) All written notices required by this section shall be sent to the other party by certified or registered mail with return receipt requested.

SEC. 3. Section 798.79 of the Civil Code is amended to read:

798.79. (a) Any legal owner or junior lienholder who forecloses on his or her security interest in a mobilehome located in a mobilehome park shall have the right to sell the mobilehome within the park to a third party in accordance with this article, but only if all of the homeowner's responsibilities and liabilities to the management regarding rent, utilities, and reasonable maintenance of a mobilehome and its premises are satisfied by the foreclosing creditor as they accrue through the date the mobilehome is resold.

(b) In the event the legal owner or junior lienholder has received from the management a copy of the notice of termination of tenancy for nonpayment of rent or other charges, the right to sell the mobilehome within the park to a third party shall also be governed by Section 798.56a.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 798.56 of the Civil Code proposed by both this bill and AB 1209. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 798.56 of the Civil Code, and (3) this bill is enacted after AB 1209, in which case Section 1 of this bill shall not become operative.

CHAPTER 1358

An act to amend Section 12804 of, to amend, repeal, and add Section 12804.9 of, to add Section 324 to, to add and repeal Section 12804.13 of, and to add, repeal, and add Section 12804.12 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 27, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 324 is added to the Vehicle Code, to read:

324. A "fifth-wheel travel trailer" is a vehicle designed for recreational purposes to carry persons or property on its own structure and so constructed as to be drawn by a motor vehicle by means of a kingpin connecting device.

SEC. 2. Section 12804 of the Vehicle Code is amended to read:

12804. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class 1 or class 2 license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) In accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class 1. Any combination of vehicles, including the operation of all vehicles under class 2 and class 3.

(2) Class 2. Any bus, any single vehicle with three or more axles, any bus or single vehicle with three or more axles towing another

vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class 3.

(3) Class 3. Any of the following:

(A) Any truck tractor or truck tractor and semitrailer combination, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle, any housecar or three-axle vehicle towing another vehicle weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle specified in paragraph (1) of subdivision (d).

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach not exceeding 10,000 pounds gross vehicle weight rating or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway. The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class 3 license upon completion of that written examination.

Class 3 does not include any bus which is not described in subparagraph (E), nor any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class 4. Any two-wheel motorcycle, any two-wheel motor-driven cycle, or any motorized bicycle. Authority to operate vehicles included in a class 4 license may be granted by endorsement on a class 1, 2, or 3 license upon completion of appropriate examination.

(c) Class 1 and class 2 driver's licenses shall be valid for operating class 1 or class 2 vehicles only when a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two

years of the date of the operation of that vehicle, is within the licensee's immediate possession, otherwise the license shall be valid only for operating class 3 vehicles and class 4 vehicles if so endorsed.

(d) (1) A class 3 license shall be valid for operating any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle when a special driver's certificate to permit the operation of those vehicles is also in the immediate possession of the licensee. A class 3 license shall also be valid for operating any of those vehicles, with no passengers aboard, while receiving behind-the-wheel driver training from a person having in his or her immediate possession a special driver's certificate to permit the operation of the vehicle.

(2) A special driver certificate for the operation of a schoolbus, school pupil activity bus, youth bus, farm labor vehicle, or vehicle requiring operator certification pursuant to Section 12804.1 shall not be valid unless the driver has in his or her immediate possession, a medical certificate issued within the past two years.

(e) The department may accept a certificate of driving experience that is issued by an employer of the applicant, in lieu of a driving test, on class 1 or 2 applications, if the applicant has first qualified for a class 3 license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's experience or training in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class 4 applications, when the certificate is issued by a law enforcement agency for its officers who operate class 4 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class 4 endorsement on that license.

(h) Drivers of vanpool vehicles, may operate with class 3 licenses, but shall possess evidence of a medical examination required for a class 2 license when operating vanpool vehicles In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years.

(i) The amendments made to paragraph (2) of subdivision (a) by Chapter 1270 of the Statutes of 1989, shall become operative only after federal regulations are adopted which permit physician's assistants and nurse practitioners to complete the physicals described in that paragraph.

(j) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute which

is enacted on or before January 1, 1993, deletes or extends that date.

SEC. 3. Section 12804.9 of the Vehicle Code is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine or by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of

motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A. Any combination of vehicles, including the operation of all vehicles under class B and class C.

(2) Class B. Any bus, any single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds, any bus or single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds towing another vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class C.

(3) Class C. Any of the following:

(A) Any truck tractor weighing less than 26,001 pounds gross vehicle weight or truck tractor towing a semitrailer weighing less than 10,000 pounds gross vehicle weight, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle weighing less than 26,001 pounds gross vehicle weight, any housecar or three-axle vehicle towing another vehicle weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle specified in paragraph (1) of subdivision (d).

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach not exceeding 10,000 pounds gross vehicle weight rating or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway. The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class 3 license upon completion of that written examination.

Class C does not include any bus which is not described in subparagraph (E), nor any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M. Any two-wheel motorcycle, any two-wheel motor-driven cycle, or any motorized bicycle. Authority to operate vehicles included in a class M license may be granted by endorsement on a class A, B, or C license upon completion of appropriate examination.

(c) No driver's license or special driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any special driver certificate, except a special construction equipment certificate or any commercial driver license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise the license shall be valid only for operating class C vehicles which are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M vehicles, if so endorsed, which are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving experience that is issued by an employer of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's experience or training in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M applications, when the certificate is issued by a law enforcement agency for its officers who operate class M vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M endorsement on that license.

(h) Drivers of vanpool vehicles, may operate with class C licenses, but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be

eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years.

(i) During the implementation of this section, from January 1, 1989, through December 31, 1992, provisions of this code pertaining to persons holding class 1, 2, 3, or 4 licenses pursuant to Section 12804, shall apply to persons holding class A, B, C, or M licenses pursuant to this section, to the extent that class A, B, C, or M vehicles under this section fall within the definition of class 1, 2, 3, or 4 vehicles under Section 12804.

(j) The amendments made to paragraph (2) of subdivision (a) by Chapter 1270 of the Statutes of 1989 shall become operative only after federal regulations are adopted which permit physician's assistants and nurse practitioners to complete the physicals described in that paragraph.

(k) This section shall remain in effect only until January 1, 1994, and on that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 4. Section 12804.9 is added to the Vehicle Code, to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license

under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine or by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A. Any combination of vehicles, including the operation of all vehicles under class B and class C.

(2) Class B. Any bus, any single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds, any bus or single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds towing another vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class C.

(3) Class C. Any of the following:

(A) Any truck tractor weighing less than 26,001 pounds gross vehicle weight or truck tractor towing a semitrailer weighing less than 10,000 pounds gross vehicle weight, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle weighing less than 26,001 pounds gross vehicle weight, any housecar or three-axle vehicle towing another vehicle weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle specified in paragraph (1) of subdivision (d).

(F) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach not exceeding 10,000 pounds gross vehicle weight rating or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

Class C does not include any bus which is not described in subparagraph (E), nor any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M. Any two-wheel motorcycle, any two-wheel motor-driven cycle, or any motorized bicycle. Authority to operate vehicles included in a class M license may be granted by endorsement on a class A, B, or C license upon completion of appropriate examination.

(c) No driver's license or special driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any special driver certificate, except a special construction equipment certificate or any commercial driver license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise the license shall be valid only for operating class C vehicles which are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M vehicles, if so endorsed, which are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving experience that is issued by an employer of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's experience or training in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M applications, when the certificate is issued by a law enforcement agency for its officers who operate class M vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M endorsement on that license.

(h) Drivers of vanpool vehicles, may operate with class C licenses, but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years.

(i) The amendments made to paragraph (2) of subdivision (a) by Chapter 1270 of the Statutes of 1989 shall become operative only after federal regulations are adopted which permit physician's assistants and nurse practitioners to complete the physicals described in that paragraph.

(j) This section shall become operative on January 1, 1994.

SEC. 5. Section 12804.12 is added to the Vehicle Code, to read:

12804.12. (a) The department may issue a restricted class A driver's license for the operation of any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach exceeding 10,000 pounds gross vehicle weight rating, or a fifth-wheel travel trailer exceeding 15,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(b) In lieu of a report of a medical examination required by Sections 12804 and 12804.9, an applicant for a restricted license issued pursuant to subdivision (a) shall, upon application and every two years thereafter, submit medical information on a form approved by the department.

(c) This section shall remain in effect only until January 1, 1994, and on that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 6. Section 12804.12 is added to the Vehicle Code, to read:

12804.12. (a) The department may issue a restricted class A driver's license for the operation of any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach exceeding 10,000 pounds gross vehicle weight rating, or a fifth-wheel travel trailer exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(b) In lieu of a report of a medical examination required by Sections 12804 and 12804.9, an applicant for a restricted license issued pursuant to subdivision (a) shall, upon application and every two years thereafter, submit medical information on a form approved by the department.

(c) This section shall become operative on January 1, 1994.

SEC. 7. Section 12804.13 is added to the Vehicle Code, to read:

12804.13. (a) The Department of the California Highway Patrol, with the cooperation of the department, shall conduct a study of the

effect on highway safety of the revisions in the permissible weights of trailer coaches and fifth-wheel travel trailers which may be towed by vehicles under class C drivers' licenses enacted by Assembly Bill 4261 of the 1989–90 Regular Session.

(b) In conducting the study, the Department of the California Highway Patrol shall compile data on trailer weights, licensure, accidents, injuries, and fatalities for all travel trailers and shall compare the accident rate, on a per vehicle-mile basis, for vehicles towing fifth-wheel travel trailers of between 10,000 and 15,000 pounds gross vehicle weight rating with the accident rate for all vehicles. The study shall also include an examination of the operating characteristics of fifth-wheel travel trailers of between 10,000 and 15,000 pounds gross vehicle weight rating.

(c) The Department of the California Highway Patrol shall, on or before January 1, 1993, prepare and transmit to the Chairpersons of the Assembly and Senate Committees on Transportation its findings, conclusions, and recommendations, including the effects on highway safety of the amendments enacted by Assembly Bill 4261 of the 1989–90 Regular Session, as specified in subdivision (a).

(d) This section shall remain in effect only until January 1, 1994, and on that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

CHAPTER 1359

An act to amend Sections 405, 2936, 12500, and 12804.9 of, and to add Section 14602.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 405 of the Vehicle Code is amended to read:

405. A "motor-driven cycle" is any motorcycle with a motor which produces less than 15 gross brake horsepower, and every bicycle with motor attached. A motor-driven cycle does not include a motorized bicycle, as defined in Section 406.

SEC. 2. Section 2936 of the Vehicle Code is amended to read:

2936. (a) The commissioner shall report to the Legislature by January 15 of each year on all of the following:

(1) The condition of the fund.

(2) Identification of any contracts or grants made during the year.

(3) The amount of the grants or contracts.

(4) The services to be provided pursuant to the grants or contracts.

(5) The group or agency contracted with to provide the services.

(b) The commissioner shall conduct a study of the effectiveness

of the program as a whole, and the contributions of each component activity, including the effectiveness of instruction, as measured by comparative accident rates of persons completing classes in contrast to persons not having completed classes, together with recommendations as to future courses of action to enhance motorcycle safety. A preliminary report on the study shall be submitted on or before July 1, 1991. Notwithstanding subdivision (a), a final report on the study shall be submitted as part of the regular annual report due to the Legislature pursuant to subdivision (a) which shall be submitted by January 15, 1992.

SEC. 3. Section 12500 of the Vehicle Code is amended to read:

12500. (a) No person shall drive a motor vehicle upon a highway, unless the person then holds a driver's license issued under this code, except those persons who are expressly exempted under this code.

(b) No person shall drive any motorcycle, motor-driven cycle, or motorized bicycle upon a highway, unless the person then holds a driver's license or endorsement issued under this code for that class, except those persons who are expressly exempted under this code, or those persons specifically authorized to operate motorized bicycles with class 3 or class C licenses as specified in subdivision (g) of Section 12804.9.

(c) No person shall drive a motor vehicle or combination of vehicles that is not of a type for which the person is licensed.

(d) No person shall drive a motor vehicle in or upon any offstreet parking facility, unless the person then holds a driver's license of the appropriate class or certification to operate the vehicle. As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

SEC. 4. Section 12804.9 of the Vehicle Code is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part

of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine or by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A. Any combination of vehicles, including the operation of all vehicles under class B and class C.

(2) Class B. Any bus, any single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds, any bus or single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds towing another vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class C.

(3) Class C. Any of the following:

(A) Any truck tractor weighing less than 26,001 pounds gross vehicle weight or truck tractor towing a semitrailer weighing less than 10,000 pounds gross vehicle weight, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any two-axle or three-axle housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle weighing less than 26,001 pounds gross vehicle

weight, any three-axle housecar or vehicle towing another vehicle weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross, or towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Class C does not include any bus, nor any two-wheel motorcycle, any two-wheel motor-driven cycle, or any two-wheel motorized bicycle.

(4) Class M1. Any two-wheel motorcycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any two-wheel motor-driven cycle, including, but not limited to, motorized bicycles or mopeds, or any bicycles with an attached motor. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or special driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any special driver certificate or any driver license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise the license shall be valid only for operating class C vehicles which are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 and M2 vehicles, if so endorsed, which are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving experience that is issued by an employer of the applicant, in lieu of

a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's experience or training in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 and M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 and M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) (1) Notwithstanding subdivision (b), from January 1, 1990, through December 31, 1993, any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M1 and M2 endorsement on that license.

(2) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, "short-term" means 48 hours or less.

(h) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(i) Drivers of vanpool vehicles, may operate with class C licenses, but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years.

(j) During the implementation of this section, from January 1, 1989, through December 31, 1992, provisions of this code pertaining to persons holding class 1, 2, 3, or 4 licenses pursuant to Section 12804, shall apply to persons holding class A, B, C, or M1 or M2 licenses pursuant to this section, to the extent that class A, B, C, M1, or M2 vehicles under this section fall within the definition of class 1, 2, 3, or 4 vehicles under Section 12804.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) The amendments made to paragraph (2) of subdivision (a) by Chapter 1270 of the Statutes of 1989 shall become operative only after

federal regulations are adopted which permit physician's assistants and nurse practitioners to complete the physicals described in that paragraph.

SEC. 5. Section 14602.5 is added to the Vehicle Code, to read:

14602.5. (a) Whenever a person is convicted for driving any class M1 or M2 motor vehicle, while his or her driving privilege has been suspended or revoked, of which vehicle he or she is the owner, or of which the owner permitted the operation, knowing the person's driving privilege was suspended or revoked, the court may, at the time sentence is imposed on the person, order the motor vehicle impounded in any manner as the court may determine, for a period not to exceed six months for a first conviction, and not to exceed 12 months for a second or subsequent conviction. For the purposes of this section, a "second or subsequent conviction" includes a conviction for any offense described in this section. The cost of keeping the vehicle shall be a lien on the vehicle, pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code.

(b) Notwithstanding subdivision (a), any motor vehicle impounded pursuant to this section which is subject to a chattel mortgage, conditional sale contract, or lease contract shall, upon the filing of an affidavit by the legal owner that the chattel mortgage, conditional sale contract, or lease contract is in default, be released by the court to the legal owner, and shall be delivered to him or her upon payment of the accrued cost of keeping the motor vehicle.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1360

An act to repeal Section 25168 of the Health and Safety Code, and to amend Sections 1668, 1804, 1808.1, 2512, 12501, 12502, 12517, 12519, 12523, 12523.5, 12804, 12804.2, 12806.5, 12810.5, 15210, 15242, 15250, 15250.5, 15275, 15278, and 36101 of, to add Sections 464, 2427, 12517.1, 12517.2, 12517.3, 12517.4, 12527, 13370, 13371, 13372, 13373, 13374, 13375, and 14100.1 to, to amend, repeal, and add Section 12804.9 of, to amend and repeal Section 12519.5 of, to repeal and add Sections 12521, 12524, 12525, and 13369 of, and to repeal Sections 3100, 3101, 3102, 3103, 3104, 12517.5, 12520, 12520.5, 12520.7, 12526, 12804.1, and

12804.3 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 25168 of the Health and Safety Code is repealed.

SEC. 1.5. Section 464 is added to the Vehicle Code, to read:

464. A "passenger transportation vehicle" is any vehicle, including a trailer bus, designed, used, or maintained for carrying more than 10 persons including the driver, which requires the person to have in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven endorsed for passenger transportation.

SEC. 1.5. Section 1668 of the Vehicle Code is amended to read:

1668. (a) The department may provide fingerprint service to the general public. When that service is provided, the department shall charge a fee of not less than five dollars ($5) for each person fingerprinted.

(b) Whenever the department submits the fingerprints of an applicant for a license or certificate to the Department of Justice, and is required to pay a fee pursuant to subdivision (e) of Section 11105 of the Penal Code, the department, without the necessity of adopting regulations, shall charge the applicant a fee sufficient to reimburse the department for that fee.

SEC. 1.7. Section 1804 of the Vehicle Code, as amended by Section 16 of Chapter 1114 of the Statutes of 1989, is amended to read:

1804. (a) The abstract shall be made upon a form furnished or approved by the department and shall contain all necessary information to identify the defendant, the date and nature of the offense, the license plate number of the vehicle involved in the offense, the date of hearing, and the judgment. The abstract shall also indicate whether the vehicle involved in the offense is a commercial motor vehicle, as defined in subdivision (b) of Section 15210, and whether the vehicle was of a type requiring the driver to have a certificate issued pursuant to Section 2512, 12517, 12519, 12523, or 12523.5 or any endorsement issued pursuant to paragraph (2) or (4) of subdivision (a) of Section 15278.

(b) As to any abstract for which the original arrest and final conviction was for a violation of Section 23101 or 23102, as those sections read before January 1, 1982, or Section 23152 or 23153, the abstract shall contain a statement indicating the percentage of alcohol, by weight, in the person's blood whenever that percentage was determined by a chemical test. The information regarding the chemical test shall be compiled if it is available to the clerk of the court. All information required to be compiled pursuant to this subdivision shall be kept confidential in the records of the

department pursuant to Section 1808.5. The department may use the information for research and statistical purposes and for determining the eligibility of any person to operate a motor vehicle on the highways of this state. The information shall not be released to any other public or private agency, except for research and statistical summary purposes and, for those purposes, the name and address of the person and any other identifying information shall not be disclosed.

(c) The Legislature finds and declares that blood-alcohol percentages have valuable research potential in providing statistical summary information on impaired drivers but that a specific blood-alcohol percentage is only an item of evidence for purposes of criminal and licensing sanctions imposed by law. The Legislature recognizes that the accuracy of the determination of a specific blood-alcohol percentage is not the critical determination in a conviction for driving under the influence of an alcoholic beverage if the blood-alcohol percentage exceeds the statutory amount.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed.

SEC. 2. Section 1804 of the Vehicle Code, as added by Section 17 of Chapter 1114 of the Statutes of 1989, is amended to read:

1804 (a) The abstract shall be made upon a form furnished or approved by the department and shall contain all necessary information to identify the defendant, including, but not limited to, the person's driver's license number, name, and date of birth, the date and nature of the offense, the vessel number, if any, of the vessel involved in the offense, the license plate number of the vehicle involved in the offense, the date of hearing, and the judgment. The abstract shall also indicate whether the vehicle involved in the offense is a commercial motor vehicle, as defined in subdivision (b) of Section 15210, and whether the vehicle was of a type requiring the driver to have a certificate issued pursuant to Section 2512, 12517, 12519, 12523, or 12523.5 or any endorsement issued pursuant to paragraph (2) or (4) of subdivision (a) of Section 15278, or whether the vessel involved in the offense was a recreational vessel, as defined in subdivision (y) of Section 651 of the Harbors and Navigation Code.

(b) As to any abstract for which the original arrest and final conviction was for a violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code or Section 23152 or 23153 of this code, the abstract shall contain a statement indicating the percentage of alcohol, by weight, in the person's blood whenever that percentage was determined by a chemical test. The information regarding the chemical test shall be compiled if it is available to the clerk of the court. All information required to be compiled pursuant to this subdivision shall be kept confidential in the records of the department pursuant to Section 1808.5. The department may use the information for research and statistical purposes and for determining the eligibility of any person to operate a motor vehicle on the highways of this state. The information shall not be released to any

other public or private agency, except for research and statistical summary purposes and, for those purposes, the name and address of the person and any other identifying information shall not be disclosed.

(c) The Legislature finds and declares that blood-alcohol percentages have valuable research potential in providing statistical summary information on impaired drivers but that a specific blood-alcohol percentage is only an item of evidence for purposes of criminal and licensing sanctions imposed by law. The Legislature recognizes that the accuracy of the determination of a specific blood-alcohol percentage is not the critical determination in a conviction for driving under the influence of an alcoholic beverage if the blood-alcohol percentage exceeds the statutory amount.

(d) This section shall become operative on January 1, 1992.

SEC. 3. Section 1808.1 of the Vehicle Code, as amended by Chapter 104 of the Statutes of 1990, is amended to read:

1808.1. (a) The prospective employer of a driver who drives a vehicle requiring a class 1, class 2, class A, or class B driver's license, class C license with an endorsement issued pursuant to paragraph (4) of subdivision (a) of Section 15278 or a certificate issued pursuant to Section 2512, 12517, 12519, 12523, or 12523.5, shall obtain a report showing the driver's current public record as recorded by the department.

(b) The employer of a driver who drives a vehicle requiring a class 1, class 2, class A, or class B driver's license, class C license with an endorsement issued pursuant to paragraph (4) of subdivision (a) of Section 15278, or a certificate issued pursuant to Section 2512, 12517, 12519, 12523, or 12523.5, shall make a request to the department to participate in a pull notice system, which is a process for the purpose of providing the employer with a report showing the driver's current public record as recorded by the department, and any subsequent convictions, failures to appear, accidents, driver's license suspensions, driver's license revocations, or any other actions taken against the driving privilege or certificate, added to the driver's record while the employer's notification request remains valid and uncanceled.

(c) The employer of a driver of a vehicle requiring a class 1, class 2, or class 3 driver's license requiring a certificate issued pursuant to Section 2512, 12517, 12519, 12523, or 12523.5 or class A, class B, or class C driver's license with a hazardous material endorsement, shall, additionally, obtain a periodic report from the department at least every six months, except that an employer who employs more than 500 drivers shall obtain a report no less than annually. The employer shall verify that each employee's driver's license has not been suspended or revoked, the employee's traffic violation point count, and whether the employee has been convicted of a violation of Section 23152 or 23153. The report shall be signed and dated by the employer and maintained at the employer's principal place of business. The reports shall be presented upon demand to any

authorized representative of the Department of the California Highway Patrol during regular business hours.

(d) Upon the termination of a driver's employment, the employer may notify the department to cancel any reports required by this section.

(e) For the purposes of the pull notice system and periodic report process required by subdivisions (b) and (c), owners, other than owner-operators as defined in Section 3557 of the Public Utilities Code, and employers who drive vehicles described in subdivisions (b) and (c), shall be enrolled as if they were employees. Family members and volunteer drivers who drive vehicles described in subdivisions (b) and (c) shall also be enrolled as if they were employees.

(f) An employer who, after receiving any driving record pursuant to this section, employs or continues to employ as a driver any person against whom a disqualifying action has been taken regarding his or her driving privilege or required driver's certificate, is guilty of a public offense, and upon conviction thereof, shall be punished by imprisonment in the county jail for not more than six months, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(g) As part of its inspection of bus maintenance facilities and terminals required at least once every 13 months pursuant to subdivision (c) of Section 34501, the Department of the California Highway Patrol shall determine whether each transit operator, as defined in Section 99210 of the Public Utilities Code, is then in compliance with this section and Section 12804.6, and shall certify each operator found to be in compliance. No funds shall be allocated under Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code to a transit operator which the Department of the California Highway Patrol has not certified under this section.

(h) A request to participate in the pull notice system established by this section shall be accompanied by a fee determined by the department to be sufficient to defray the entire actual cost to the department for the notification service. For the receipt of subsequent reports, the employer shall also be charged a fee established by the department pursuant to Section 1811. Any employer who qualifies under Section 1812 shall be exempt from any fee required under this section. Failure to pay the fee shall result in automatic cancellation of the employer's participation in the notification services.

(i) The department, as soon as feasible, may establish an automatic procedure to provide the periodic reports in subdivision (c) to employers on a regular basis without the need for individual requests.

(j) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

(k) The employer of a driver who is employed as a casual driver is not required to enter that driver's name in the pull notice system, as otherwise required by subdivision (a). However, the employer of a casual driver shall be in possession of a report of the driver's current public record as recorded by the department, prior to allowing a casual driver to drive a vehicle requiring a class 1, class 2, class A, class B or class C driver's license with a hazardous materials endorsement, or a certificate issued pursuant to Section 2512, 12517, 12519, 12523, or 12523.5. A report is current if it was issued less than six months prior to the date the employer employs the driver. As used in this subdivision, a driver is employed as a casual driver when the employer has employed the driver less than 30 days during the preceding six months. For purposes of this subdivision, "casual driver" does not include any driver who operates a vehicle that requires a passenger transportation endorsement.

SEC. 4. Section 2427 is added to the Vehicle Code, to read:

2427. Whenever the department submits the fingerprints of an applicant for a license or certificate to the Department of Justice, and is required to pay a fee pursuant to subdivision (e) of Section 11105 of the Penal Code, the department, without the necessity of adopting regulations, shall charge the applicant a fee sufficient to reimburse the department for that fee.

SEC. 4.5. Section 2512 of the Vehicle Code, as amended by Chapter 104 of the Statutes of 1990, is amended to read:

2512. (a) The commissioner, after consultation with, and pursuant to the recommendations of, the Emergency Medical Service Authority and the department, shall adopt and enforce reasonable regulations as the commissioner determines are necessary for the public health and safety regarding the operation, equipment, and certification of drivers of all ambulances used for emergency services. The regulations shall not conflict with standards established by the Emergency Medical Service Authority pursuant to Section 1797.170 of the Health and Safety Code. The commissioner shall exempt, upon request of the county board of supervisors that an exemption is necessary for public health and safety, noncommercial ambulances operated within the county from the regulations adopted under this section as are specified in the board of supervisors' request. The Emergency Medical Service Authority shall be notified by the county boards of supervisors of any exemptions.

(b) The department, in cooperation with the Department of the California Highway Patrol and the Emergency Medical Service Authority, may adopt and administer regulations relating to the issuance, suspension, or revocation of ambulance driver's certificates. The department shall charge a fee of twenty-five dollars ($25) for the issuance of an original certificate and twelve dollars ($12) for the renewal of that certificate, and, in the administration thereof, to exercise the powers granted to the commissioner by this section.

(c) This section shall not preclude the adoption of more

restrictive regulations by local authorities, except that inspection of ambulances pursuant to subdivision (b) of Section 2510 shall not be duplicated by local authorities. It is the intent of the Legislature that regulations adopted by the commissioner pursuant to this section shall be the minimum necessary to protect public health and safety, and shall not be so restrictive as to preclude compliance by ambulances operated in sparsely populated areas. This subdivision does not relieve the owner or driver of any ambulance from compliance with Section 21055.

(d) The Department of the California Highway Patrol after consultation with the department and the Emergency Medical Service Authority shall prepare, and make available for purchase, an ambulance driver's handbook.

SEC. 5. Section 3100 of the Vehicle Code is repealed.

SEC. 6. Section 3101 of the Vehicle Code is repealed.

SEC. 7. Section 3102 of the Vehicle Code is repealed.

SEC. 8. Section 3103 of the Vehicle Code is repealed.

SEC. 9. Section 3104 of the Vehicle Code is repealed.

SEC. 10. Section 12501 of the Vehicle Code is amended to read:

12501. The following persons are not required to obtain a driver's license:

(a) An officer or employee of the United States, while operating a motor vehicle owned or controlled by the United States on the business of the United States, except when the motor vehicle being operated is a commercial motor vehicle, as defined in Section 15210.

(b) Any person while driving or operating implements of husbandry incidentally operated or moved over a highway, except as provided in Section 36300 or 36305.

(c) Any person driving or operating an off-highway motor vehicle subject to identification, as defined in Section 38012, while driving or operating such motor vehicle as provided in Section 38025. Nothing in this subdivision authorizes operation of a motor vehicle by a person without a valid driver's license upon any offstreet parking facility, as defined in subdivision (c) of Section 12500.

SEC. 10.5. Section 12502 of the Vehicle Code is amended to read:

12502. (a) The following persons may operate a motor vehicle in this state without obtaining a driver's license under this code:

(1) A nonresident over the age of 18 years having in his or her immediate possession a valid driver's license issued by a foreign jurisdiction of which he or she is a resident, except as provided in Section 12505.

(2) A nonresident having in his or her immediate possession a valid driver's license, issued by the Diplomatic Motor Vehicle Office of the Office of Foreign Missions of the United States Department of State, for the type of motor vehicle or combination of vehicles that the person is operating.

(b) Any person entitled to the exemption contained in subdivision (a), while operating, within this state, a commercial vehicle, as defined in subdivision (b) of Section 15210, shall have in his or her

possession a current medical certificate of a type described in subdivision (c) of Section 12804, which has been issued within two years of the date of operation of that vehicle.

(c) The department shall report to the Legislature by January 15 of each year, regarding the frequency of violations and reportable accidents by holders of the licenses described in paragraph (2) of subdivision (a). In preparing the report, the department shall use information, as available, from its own files, and from the Department of the California Highway Patrol, local law enforcement agencies, and the Diplomatic Motor Vehicle Office of the Office of Foreign Missions of the United States Department of State.

SEC. 11. Section 12517 of the Vehicle Code, as amended by Chapter 104 of the Statutes of 1990, is amended to read:

12517. (a) No person shall operate a schoolbus unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven endorsed for passenger transportation. When transporting one or more pupils at or below the 12th-grade level to or from a public or private school or to or from public or private school activities, the person shall also have in his or her immediate possession a certificate issued by the department to permit the operation of schoolbuses.

(b) No person shall operate a school pupil activity bus unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle to be driven endorsed for passenger transportation. When transporting one or more pupils at or below the 12th-grade level to or from public or private school activities, the person shall also have in his or her immediate possession a certificate issued by the department to permit the operation of school pupil activity buses.

(c) The applicant for a certificate to operate a schoolbus or school pupil activity bus shall meet the eligibility and training requirements specified for schoolbus and school pupil activity busdrivers in this code, the Education Code and regulations adopted by the Department of the California Highway Patrol, and shall pay a fee of twenty-five dollars ($25) with the application for issuance of an original certificate, and a fee of twelve dollars ($12) for the renewal of that certificate.

(d) A person holding a valid certificate to permit the operation of a schoolbus or school pupil activity bus, issued prior to January 1, 1991, shall not be required to reapply for a certificate to satisfy any additional requirements imposed by the act adding this subdivision until the certificate he or she holds expires or is canceled or revoked.

SEC. 12. Section 12517.1 is added to the Vehicle Code, to read:

12517.1. (a) A "schoolbus accident" means any of the following:

(1) A motor vehicle accident resulting in property damage in excess of five hundred dollars ($500) or personal injury, on public or private property, and involving a schoolbus, youth bus, school pupil activity bus, or general public paratransit vehicle transporting a pupil.

(2) A collision between a vehicle and a pupil or a schoolbus driver while the pupil or driver is crossing the highway when the schoolbus flashing red signal lamps are required to be operated pursuant to Section 22112.

(3) Injury of a pupil inside a vehicle described in paragraph (1) as a result of acceleration, deceleration, or other movement of the vehicle.

(b) The Department of the California Highway Patrol shall investigate all schoolbus accidents, except that accidents involving only property damage and occurring entirely on private property shall be investigated only if they involve a violation of this code.

SEC. 13. Section 12517.2 is added to the Vehicle Code, to read:

12517.2. (a) Applicants for an original or renewal certificate to drive a schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or farm labor vehicle shall submit a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration.

(b) Schoolbus drivers, within the same month of reaching the age of 65 and each 12th month thereafter, shall undergo a physical examination, pursuant to Section 12804 or 12804.9, and submit a report of medical examination on a form as specified in subdivision (a).

SEC. 14. Section 12517.3 is added to the Vehicle Code, to read:

12517.3. (a) Applicants for an original certificate to drive a schoolbus, school pupil activity bus, youth bus, or general public paratransit vehicle, shall be fingerprinted by the Department of the California Highway Patrol on a form provided or approved by the department for submission to the Department of Justice.

(b) Applicants for an original certificate to drive an ambulance shall submit a completed fingerprint card to the department.

SEC. 15. Section 12517.4 is added to the Vehicle Code, to read:

12517.4. This section governs the issuance of a certificate to drive a schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or farm labor vehicle.

(a) The driver certificate shall be issued only to applicants meeting all applicable provisions of this code and passing the examinations prescribed by the department and the Department of the California Highway Patrol. The examinations shall be conducted by the Department of the California Highway Patrol, pursuant to Sections 12517, 12519, 12522, 12523, and 12523.5.

(b) A temporary driver certificate shall be issued by the Department of the California Highway Patrol after an applicant has cleared a criminal history background check by the Department of Justice and, if applicable, the Federal Bureau of Investigation, and has passed the examinations and meets all other applicable provisions of this code.

(c) A permanent driver's certificate shall be issued by the department after an applicant has passed all tests and met all applicable provisions of this code. Certificates are valid for a maximum of four years and shall expire on the same date as the applicant's driver's license.

(d) No holder of a certificate shall violate any restriction placed on the certificate. Depending upon the type of vehicle used in the driving test and the abilities and physicial condition of the applicant, the Department of the California Highway Patrol and the department may place restrictions on a certificate to assure the safe operation of a motor vehicle and safe transportation of passengers. These restrictions may include, but are not limited to, all of the following:

(1) Automatic transmission only.

(2) Hydraulic brakes only.

(3) Type 2 bus only.

(4) Conventional or type 2 bus only.

(5) Two-axle motor truck or passenger vehicle only.

(e) No holder of a certificate shall drive any motor vehicle equipped with a two-speed rear axle unless the certificate is endorsed: "May drive vehicle with two-speed rear axle."

SEC. 16. Section 12517.5 of the Vehicle Code is repealed.

SEC. 17. Section 12519 of the Vehicle Code is amended to read:

12519. (a) No person shall operate a farm labor vehicle unless the person has in his or her possession a driver's license for the appropriate class of vehicle to be driven, endorsed for passenger transportation, and, when transporting one or more farmworker passengers, a certificate issued by the department to permit the operation of farm labor vehicles.

(b) The applicants shall present evidence that they have successfully completed the driver training course developed by the Department of Education pursuant to Section 40081 of the Education Code, and approved by the Department of Motor Vehicles and the Department of the California Highway Patrol before a permanent certificate will be issued.

(c) The certificate shall be issued only to applicants qualified by examinations prescribed by the Department of Motor Vehicles and the Department of the California Highway Patrol and upon payment of a fee of twelve dollars ($12) to the Department of the California Highway Patrol.The examinations shall be conducted by the Department of the California Highway Patrol.

(d) A person holding a valid certificate to permit the operation of a farm labor vehicle, issued prior to January 1, 1991, shall not be required to reapply for a certificate to satisfy any additional requirements imposed by the act adding this subdivision until the certificate he or she holds expires or is canceled or revoked.

SEC. 18. Section 12519.5 of the Vehicle Code is amended to read:

12519.5. (a) No person holding a class 1 or class 2 driver's license shall operate a tour bus unless that person has in his or her immediate

possession a valid driver's license of the appropriate class and a certificate to operate a tour bus issued by the department pursuant to subdivision (b).

(b) The driver's certificate shall be issued only to applicants qualified by examinations prescribed and conducted by the department upon payment of a forty-one dollar ($41) fee.

(c) Any application for an original tour bus certificate or renewal of the certificate and any tour bus certificate issued pursuant to subdivision (b) shall be subject to Section 13369.

(d) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 19. Section 12520 of the Vehicle Code is repealed.

SEC. 20. Section 12520.5 of the Vehicle Code is repealed.

SEC. 21. Section 12520.7. of the Vehicle Code is repealed.

SEC. 22. Section 12521 of the Vehicle Code is repealed.

SEC. 22.5. Section 12521 is added to the Vehicle Code, to read:

12521. An operator of a tour bus shall, at all times when operating the tour bus, do all the following:

(a) Use a safety belt.

(b) Report any accidents involving the tour bus to the Department of the California Highway Patrol.

SEC. 23. Section 12523 of the Vehicle Code, as amended by Chapter 104 of the Statutes of 1990, is amended to read:

12523. (a) No person shall operate a youth bus without having in possession a valid driver's license of the appropriate class, endorsed for passenger transportation and a certificate issued by the department to permit the operation of a youth bus.

(b) Applicants for a certificate to drive a youth bus shall present evidence that they have successfully completed a driver training course administered by or at the direction of their employer consisting of a minimum of 10 hours of classroom instruction covering applicable laws and regulations and defensive driving practices and a minimum of 10 hours of behind-the-wheel training in a vehicle to be used as a youth bus. Applicants seeking to renew a certificate to drive a youth bus shall present evidence that they have received two hours of refresher training during each 12 months of driver certificate validity.

(c) The driver certificate shall be issued only to applicants qualified by examinations prescribed by the Department of Motor Vehicles and the Department of the California Highway Patrol, and upon payment of a fee of twenty-five dollars ($25) for an original certificate and twelve dollars ($12) for the renewal of that certificate to the Department of the California Highway Patrol. The examinations shall be conducted by the Department of the California Highway Patrol. The Department of Motor Vehicles may deny, suspend, or revoke a certificate valid for driving a youth bus for the causes specified in this code or in regulations adopted pursuant to this code.

(d) An operator of a youth bus shall, at all times when operating a youth bus, do all of the following:

(1) Use seat belts.

(2) Refrain from smoking.

(3) Report any accidents reportable under Section 16000 to the Department of the California Highway Patrol.

(e) A person holding a valid certificate to permit the operation of a youth bus, issued prior to January 1, 1991, shall not be required to reapply for a certificate to satisfy any additional requirements imposed by the act adding this subdivision until the certificate he or she holds expires or is canceled or revoked.

SEC. 24. Section 12523.5 of the Vehicle Code, as amended by Chapter 104 of the Statutes of 1990, is amended to read:

12523.5. (a) No person shall operate a general public paratransit vehicle unless he or she has in his or her possession a valid driver's license of the appropriate class endorsed for passenger transportation when operating a vehicle designed, used, or maintained for carrying more than 10 persons including the driver and either (1) a certificate issued by the department to permit the operation of a general public paratransit vehicle, or (2) a certificate issued by the department to drive a schoolbus or school pupil activity bus pursuant to Section 12517.

(b) Applicants for a certificate to drive a general public paratransit vehicle shall pay a fee to the Department of the California Highway Patrol of twenty-five dollars ($25) for an original certificate and twelve dollars ($12) for a renewal certificate. Applicants for an original certificate shall present evidence that they have successfully completed a driver training course consisting of a minimum of 40 hours of instruction within the previous two years. The instruction shall have covered applicable laws and regulations and defensive driving practices, a minimum of eight hours of certified defensive driving, and a minimum of 20 hours of behind-the-wheel training in a vehicle to be used as a general public paratransit vehicle. Applicants seeking to renew a certificate valid for driving a general public paratransit vehicle shall present evidence that they have received two hours of refresher training during each 12 months of driver certificate validity.

(c) The driver certificate shall be issued only to applicants qualified by examinations prescribed by the Department of Motor Vehicles and the Department of the California Highway Patrol. The examinations shall be conducted by the Department of the California Highway Patrol. The Department of Motor Vehicles may deny, suspend, or revoke a certificate valid for driving a general public paratransit vehicle for the causes specified in this code or the Education Code or in regulations adopted pursuant to this code or the Education Code.

(d) An operator of a general public paratransit vehicle shall do all of the following:

(1) Use seatbelts.

(2) Refrain from smoking.

(3) Report any accident reportable under Section 16000 to the Department of the California Highway Patrol.

(e) A person holding a valid certificate to permit the operation of a general public paratransit vehicle, issued prior to January 1, 1991, shall not be required to reapply for a certificate to satisfy any additional requirements imposed by the act adding this subdivision until the certificate he or she holds expires or is canceled or revoked.

SEC. 25. Section 12524 of the Vehicle Code is repealed.

SEC. 25.1. Section 12524 is added to the Vehicle Code, to read:

12524. (a) No class 1, class 2, or class 3 driver's license holder shall operate a vehicle hauling fissile class III shipments or large quantity radioactive materials, as defined in Section 173.389 of Title 49 of the Code of Federal Regulations, unless the driver possesses a valid license of the appropriate class and a radioactive materials driver's certificate, issued by the Department of Motor Vehicles, which permits the driver to operate those vehicles.

(b) Applicants for the certificates shall present evidence to the Department of Motor Vehicles that they have successfully completed the radioactive materials hauler driving training course developed by the Department of Motor Vehicles and the Department of the California Highway Patrol before a certificate may be issued. Either the employer of the driver or a driving school licensed pursuant to Chapter 1 (commencing with Section 11100) of Division 5 may administer the training course.

(c) The certificate shall be issued only to applicants qualified by examinations prescribed by the Department of Motor Vehicles and the Department of the California Highway Patrol. These examinations shall be conducted by the Department of Motor Vehicles, and an examination fee of twelve dollars ($12) shall be paid by the applicant to the Department of Motor Vehicles.

(d) Any application for an original radioactive materials driver's certificate or renewal of the certificate and any radioactive materials driver's certificate issued pursuant to this section shall be subject to the provisions of Section 13369.

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 26. Section 12525 of the Vehicle Code is repealed.

SEC. 27. Section 12525 is added to the Vehicle Code, to read:

12525. Mechanics or other maintenance personnel may operate vehicles requiring certificates issued pursuant to Section 2512, 12517, 12519, 12523, or 12523.5 without obtaining those certificates if that operation is within the course of their employment and they do not transport pupils or members of the public.

SEC. 27.5. Section 12526 of the Vehicle Code is repealed.

SEC. 28. Section 12527 is added to the Vehicle Code, to read:

12527. In addition to satisfying all requirements specified in this code and regulations adopted pursuant to this code, an applicant for

an ambulance driver certificate shall satisfy all of the following requirements:

(a) Except as otherwise provided, every ambulance driver responding to an emergency call or transporting patients shall be at least 18 years of age, hold a driver's license valid in California, possess a valid ambulance driver certificate, and be trained and competent in ambulance operation and the use of safety and emergency care equipment required by the California Code of Regulations governing ambulances.

(b) Except as provided in subdivision (f), no person shall operate an ambulance unless the person has in his or her immediate possession a driver's license for the appropriate class of vehicle to be driven, and a certificate issued by the department to permit the operation of an ambulance.

(c) An ambulance driver certificate may be issued by the department only upon the successful completion of an examination conducted by the department and subject to all of the following conditions:

(1) An applicant for an original or renewal driver certificate shall submit a report of medical examination on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. The report shall be dated within the two years preceding the application date.

(2) An applicant for an original driver certificate shall submit an acceptable fingerprint card.

(3) The certificate to drive an ambulance shall be valid for a period not exceeding four years and six months and shall expire on the same date as the driver's license. The ambulance driver certificate shall be valid only when accompanied by a medical examination certificate which was issued within the preceding two years and approved by the department, Federal Highway Administration, or Federal Aviation Administration.

(4) The ambulance driver certificate is renewable under conditions prescribed by the department. Applicants renewing an ambulance driver certificate shall possess certificates or licenses evidencing compliance with the emergency medical training and educational standards for ambulance attendants established by the Emergency Medical Service Authority.

(d) Every ambulance driver shall have been trained to assist the ambulance attendant in the care and handling of the ill and injured. The driver of a California-based ambulance shall, within one year of initial issuance of the driver's ambulance driver certificate, possess a certificate or license evidencing compliance with the emergency medical training and educational standards established for ambulance attendants by the Emergency Medical Service Authority. In those emergencies requiring both the regularly assigned driver and attendant to be utilized in providing patient care, the specialized emergency medical training requirement shall not apply to persons temporarily detailed to drive the ambulance.

(e) A person holding a valid certificate to permit the operation of an ambulance, issued prior to January 1, 1991, shall not be required to reapply for a certificate to satisfy the requirements of this section until the certificate he or she holds expires or is canceled or revoked.

(f) An ambulance certificate is not required for persons operating ambulances in the line of duty as salaried, regular, full-time police officers, deputy sheriffs, or members of a fire department of a public agency. This exemption does not include volunteers and part-time employees or members of a department whose duties are primarily clerical or administrative.

SEC. 29. Section 12804 of the Vehicle Code is amended to read:

12804. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class 1 or class 2 license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of

the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) In accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class 1. Any combination of vehicles, including the operation of all vehicles under class 2 and class 3.

(2) Class 2. Any bus, any single vehicle with three or more axles, any bus or single vehicle with three or more axles towing another vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class 3.

(3) Class 3. Any of the following:

(A) Any truck tractor or truck tractor and semitrailer combination, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle, any housecar or three-axle vehicle towing another vehicle weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle specified in paragraph (1) of subdivision (d).

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway. The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class 3 license upon completion of that written examination.

Class 3 does not include any bus which is not described in subparagraph (E), nor any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class 4. Any two-wheel motorcycle, any two-wheel motor-driven cycle, or any motorized bicycle. Authority to operate vehicles included in a class 4 license may be granted by endorsement on a class 1, 2, or 3 license upon completion of appropriate examination.

(c) Class 1 and class 2 driver's licenses shall be valid for operating class 1 or class 2 vehicles only when a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, otherwise the license shall be valid only for operating class 3 vehicles and class 4 vehicles if so endorsed.

(d) (1) A class 3 license shall be valid for operating any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle when a special driver's certificate to permit the operation of those vehicles is also in the immediate possession of the licensee. A class 3 license shall also be valid for operating any of those vehicles, with no passengers aboard, while receiving behind-the-wheel driver training from a person having in his or her immediate possession a special driver's certificate to permit the operation of the vehicle.

(2) A special driver certificate for the operation of a schoolbus, school pupil activity bus, youth bus, or farm labor vehicle shall not be valid unless the driver has in his or her immediate possession, a medical certificate issued within the past two years.

(e) The department may accept a certificate of driving experience that is issued by an employer of the applicant, in lieu of a driving test, on class 1 or 2 applications, if the applicant has first qualified for a class 3 license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's experience or training in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class 4 applications, when the certificate is issued by a law enforcement agency for its officers who operate class 4 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class 4 endorsement on that license.

(h) Drivers of vanpool vehicles, may operate with class 3 licenses, but shall possess evidence of a medical examination required for a class 2 license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or

a hit and run offense in the last five years.

(i) The amendments made to paragraph (2) of subdivision (a) by Chapter 1270 of the Statutes of 1989, shall become operative only after federal regulations are adopted permitting physician's assistants and nurse practitioners to complete the physicals described in that paragraph.

(j) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute which is enacted on or before January 1, 1993, deletes or extends that date.

SEC. 30. Section 12804.1 of the Vehicle Code is repealed.

SEC. 30.5. Section 12804.2 of the Vehicle Code, as amended by Chapter 115 of the Statutes of 1990, is amended to read:

12804.2. (a) Notwithstanding Section 15275, a person with at least a class 3 or class C driver's license is exempt from the endorsement requirements of Section 15275 if all of the following conditions are met:

(1) The person is employed in an agricultural operation and is driving a vehicle, other than a vehicle used in common or contract motor carriage, controlled by a farmer and transporting agricultural products or farm machinery or supplies to or from a farm.

(2) (A) The person has completed an agricultural hazardous materials transportation program offered or approved by the Department of the California Highway Patrol. The Department of the California Highway Patrol shall make the program available at no cost, and the program shall contain information specifically applicable to the safe transportation of agricultural chemicals and shall not be less than two hours in length. If the commissioner determines that the program cannot be offered in a particular area of the state because of personnel constraints, a person in that area may instead comply with this requirement by receiving agricultural hazardous materials training, in a program and manner approved by the Department of the California Highway Patrol, from an organization or a person in a supervisory position that has been certified by the Department of the California Highway Patrol.

(B) Upon successful completion of the program specified in subparagraph (A), a verification of training, valid for four years, shall be issued by the instructor and shall be carried by the person when operating an implement of husbandry or a motor vehicle required to display placards or markings pursuant to Section 27903 or which is hauling hazardous waste, as defined in Sections 25115 and 25117 of the Health and Safety Code. Within 10 days of issuance by the instructor, a copy of the verification shall be forwarded by the person completing the training to the department for inclusion on the permanent driving record of the person, together with a fee of twelve dollars ($12).

(C) The department, in consultation with the Department of the California Highway Patrol, shall develop a suitable form for verification of training.

(3) The person has, within the vehicle, informational material

approved by the Department of the California Highway Patrol, in both English and Spanish, outlining basic safety procedures to be followed in the event of an accident. The Department of the California Highway Patrol shall provide the information required by this subdivision and make it available at no cost to the person.

(4) The person is operating a vehicle which is an implement of husbandry or a motor vehicle requiring a class 3 or class C driver's license and the distance which the vehicle is being operated between the final point of distribution and the ultimate point of application or from part of a farm to another part thereof, or from one farm to another, is not more than 50 miles.

(5) In lieu of a report of a medical examination required by Sections 12804 and 12804.9, an applicant for a certificate pursuant to paragraph (3) shall, upon application and every two years thereafter, submit medical information on a form approved by the department. A person who obtains a verification of training pursuant to this section, but does not meet the medical requirements for a hazardous materials endorsement established by the department under Sections 12804 and 12804.9, is not qualified to transport hazardous materials.

(6) For purposes of the penalties and sanctions prescribed by Article 7 (commencing with Section 15300) of Chapter 7, the operation of a vehicle pursuant to this subdivision is deemed to be the operation of a commercial motor vehicle.

(b) Implementation dates for this section may be established by the Department of Motor Vehicles by regulation in order to accomplish an orderly certification program.

SEC. 31. Section 12804.3 of the Vehicle Code is repealed.

SEC. 31.5. Section 12804.9 of the Vehicle Code is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The

examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine or by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, provided that any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of

26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any housecar.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any housecar or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway. The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class 3 license upon completion of that written examination.

(G) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any two-wheel motor-driven cycle, including, but not limited to, a motorized bicycle or moped, or any bicycle with an attached motor. Authority to operate vehicles included in Class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report

from which the certificate was issued is on file with the department. Otherwise the license shall be valid only for operating class C vehicles which are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, which are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) (1) Notwithstanding subdivision (b), until December 31, 1993, any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M1 or M2 endorsement on that license.

(2) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, "short-term" means 48 hours or less.

(h) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(i) Drivers of vanpool vehicles, may operate with class C licenses, but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years.

(j) During the implementation of this section, from January 1, 1989, through December 31, 1992, provisions of this code pertaining to persons holding class 1, 2, 3, or 4 licenses pursuant to Section 12804, shall apply to persons holding class A, B, C, M1, or M2 licenses pursuant to this section, to the extent that class A, B, C, M1, or M2 vehicles under this section fall within the definition of class 1, 2, 3, or 4 vehicles under Section 12804.

(k) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

(*l*) The amendments made to paragraph (2) of subdivision (a) by Chapter 1270 of the Statutes of 1989 shall become operative only after federal regulations are adopted which permit physician's assistants and nurse practitioners to complete the physicals described in that paragraph.

(m) This section shall remain in effect only until January 1, 1994, and on that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 31.7. Section 12804.9 is added to the Vehicle Code, to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license

under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine or, when federal regulations are adopted which so permit, by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, provided that any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any housecar.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any housecar or vehicle towing another vehicle with a gross

vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(G) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any two-wheel motor-driven cycle, including, but not limited to, a motorized bicycle or moped, or any bicycle with an attached motor. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise the license shall be valid only for operating class C vehicles which are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, which are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she

is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, "short-term" means 48 hours or less.

(h) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(i) Drivers of vanpool vehicles, may operate with class C licenses, but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years.

(j) This section shall become operative on January 1, 1994.

SEC. 32. Section 12806.5 of the Vehicle Code is amended to read:

12806.5. The department may adopt regulations specifying, in addition to any cause provided by statute, the circumstances which are grounds for the suspension or revocation of a schoolbus, school pupil activity, youth busdriver, farm labor vehicle, or general public paratransit vehicle certificate.

SEC. 33. Section 12810.5 of the Vehicle Code is amended to read:

12810.5. (a) Except as otherwise provided in subdivision (b), any person whose driving record shows a violation point count of four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months shall be prima facie presumed to be a negligent operator of a motor vehicle. In applying this subdivision to a driver, if the person requests and appears at a hearing conducted by the department, the department shall give due consideration to the amount of use or mileage traveled in the operation of a motor vehicle.

(b) (1) Any class 1, class 2, class A, or class B licensed driver, except persons holding certificates pursuant to Section 2512, 12517, 12519, 12523, or 12523.5, or an endorsement issued pursuant to paragraph (2) or (4) of subdivision (a) of Section 15278, who is presumed to be a negligent operator pursuant to subdivision (a), and who requests and appears at a hearing and is found to have a driving record violation point count of six or more points in 12 months, eight

or more points in 24 months, or 10 or more points in 36 months is presumed to be a prima facie negligent operator. However, the higher point count shall not apply if the department reasonably determines that four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months are attributable to the driver's operation of a vehicle requiring only a class 3 or class C license, and not requiring a certificate or endorsement, or a class 4 or class M license.

(2) For purposes of this subdivision, each point assigned pursuant to Section 12810 shall be valued at one and one-half times the value otherwise required by that section for each violation reasonably determined by the department to be attributable to the driver's operation of a vehicle requiring a class 1 or class 2 or class A or class B license, or requiring any certificate or endorsement described in this section.

(c) The department may require a negligent operator whose driving privilege is suspended or revoked pursuant to this section to submit proof of financial responsibility as defined in Section 16430. The proof of financial responsibility shall be filed on or before the date of reinstatement following the suspension or revocation. The proof of financial responsibility shall be maintained with the department for three years following that date of reinstatement.

SEC. 34. Section 13369 of the Vehicle Code is repealed.

SEC. 35. Section 13369 is added to the Vehicle Code, to read:

13369. This section applies to the following endorsements and certificates: passenger transport vehicle, hazardous materials, schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, and farm labor vehicle.

(a) The department shall refuse to issue or renew, or shall revoke for any of the following causes, the certificate or endorsement of any person who:

(1) Within the preceding three years, has committed any violation which results in a conviction assigned a violation point count of two or more, as defined in Section 12810 and 12810.5. The department shall not refuse to issue or renew, nor shall it revoke the certificate or endorsement of a person who possesses a certificate issued pursuant to Section 12804.6 and who operates only a transit bus, if the violation leading to the conviction occurred in the person's private vehicle and not in a commercial motor vehicle, as defined in Section 15210.

(2) Within the preceding three years, has had his or her driving privilege suspended, revoked, or on probation for any reason involving unsafe operation of a motor vehicle. The department shall not refuse to issue or renew, nor shall it revoke, the certificate or endorsement of a person who possesses a certificate issued pursuant to Section 12804.6 and who operates only a transit bus, if the person's driving privilege has, within the preceding three years, been placed on probation only for any reason involving unsafe operation of a motor vehicle.

(b) The department may refuse to issue or renew, or may suspend or revoke the certificate or endorsement of any person who:

(1) Within the preceding 12 months, has been involved as a driver in three accidents in which the driver caused or contributed to the causes of the accidents.

(2) Within the preceding 24 months, as a driver, caused or contributed to the cause of an accident resulting in a fatality or serious injury or serious property damage in excess of five hundred dollars ($500).

(3) Has violated any provision of this code, or any rule or regulation pertaining to the safe operation of a vehicle for which the certificate or endorsement was issued.

(4) Has violated any restriction of the certificate, endorsement, or commercial driver's license.

(5) Has knowingly made a false statement or concealed a material fact on an application for a certificate or endorsement.

(6) Has been determined by the department to be a negligent or incompetent operator.

(7) Has demonstrated irrational behavior to the extent that a reasonable and prudent person would have reasonable cause to believe that the applicant's ability to perform the duties of a driver may be impaired.

(8) Excessively or habitually uses, or is addicted to, alcoholic beverages, narcotics, or dangerous drugs.

(9) Does not meet the minimum medical standards established or approved by the department.

(c) The department may cancel the certificate or endorsement of any driver who:

(1) Does not have a valid license of the appropriate class.

(2) Has requested cancellation of the certificate or endorsement.

(3) Has failed to meet any of the requirements for issuance or retention of the certificate or endorsement, including, but not limited to, payment of the proper fee, submission of an acceptable medical report and fingerprint cards, and failure to meet prescribed training requirements.

(4) Has had his or her driving privilege suspended or revoked for a cause involving other than the safe operation of a motor vehicle.

(d) With regard to a violation, accident, or departmental action which occurred prior to January 1, 1991, subdivision (a) and paragraphs (1), (2), and (3) of subdivision (b) do not apply to a driver holding a valid passenger transport or hazardous materials endorsement, or a valid class 1 or class 2 license who is applying to convert that license to a class A or class B license with a passenger transport or hazardous materials endorsement, if the driver submits proof that he or she is currently employed operating vehicles requiring the endorsement, or a valid class 3 license who is applying for a class C license with a hazardous materials endorsement if the driver submits proof that he or she is currently employed operating vehicles requiring the endorsement.

(e) Subdivision (d) does not apply to drivers applying for a schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or farm labor vehicle certificate.

(f) (1) Reapplication following denial or revocation under subdivision (a) or (b) may be made after a period of not less than one year from the effective date of denial or revocation, except in cases where a longer period of suspension or revocation is required by law.

(2) Reapplication following cancellation under subdivision (d) may be made any time without prejudice.

SEC. 36. Section 13370 is added to the Vehicle Code, to read:

13370. (a) The department shall deny or revoke a schoolbus, school pupil activity bus, general public paratransit vehicle, or youth bus driver certificate if any of the following causes apply to the applicant or certificate holder:

(1) Has been convicted of any sex offense as defined in Section 44010 of the Education Code.

(2) Has been convicted, within the two years preceding the application date, of any offense specified in Section 11361.5 of the Health and Safety Code.

(3) Has failed to meet prescribed testing or training requirements for certificate issuance.

(b) The department may deny, suspend, or revoke a schoolbus, school pupil activity bus, general public paratransit vehicle, or youth bus driver certificate if any of the following causes apply to the applicant or certificate holder:

(1) Has been convicted of any crime specified in Section 44424 of the Education Code within the seven years preceding the application date. This paragraph does not apply if denial is mandatory.

(2) Has committed any act involving moral turpitude.

(3) Has been convicted of any offense, not specified in this section and other than a sex offense, that is punishable as a felony, within the seven years preceding the application date.

(4) Has been dismissed as a driver for a cause relating to pupil transportation safety.

(5) Has been convicted, within the seven years preceding the application date, of any offense relating to the use, sale, possession, or transportation of narcotics, habit-forming drugs, or dangerous drugs, except as provided in paragraph (3) of subdivision (a).

(c) (1) Reapplication following denial or revocation under subdivision (a) or (b) may be made after a period of not less than one year from the effective date of denial or revocation.

(2) An applicant or holder of a certificate may reapply for a certificate whenever a felony or misdemeanor conviction is reversed or dismissed. A termination of probation and dismissal of charges pursuant to Section 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of the Penal Code is not a dismissal for purposes of this section.

SEC. 37. Section 13371 is added to the Vehicle Code, to read:

13371. This section applies to schoolbus, school pupil activity bus, youth bus, and general public paratransit vehicle certificates.

(a) Any driver or applicant who has received a notice of denial, suspension, or revocation, may, within 15 days of the mailing date, submit to the department a written request for a hearing. Failure to demand a hearing within 15 days is a waiver of the right to a hearing.

(1) Upon receipt by the department of the hearing request, the department may stay the action until a hearing is conducted and the final decision has been rendered by the Certificate Action Review Board pursuant to paragraph (2) of subdivision (c). The department shall not stay an action when there is reasonable cause to believe the stay would pose a significant risk to the safety of pupils being transported in a schoolbus, school pupil activity bus, youth bus, or persons being transported in a general public paratransit vehicle.

(2) An applicant or driver is not entitled to a hearing whenever the action by the department is made mandatory by this article or any other applicable law or regulation except where the cause for denial is based on failure to meet medical standards or excessive and habitual use of or addiction to alcoholic beverages, narcotics, or dangerous drugs.

(b) The department shall appoint a hearing officer to conduct the hearing in accordance with Sections 14107, 14109, and 14111. After the hearing, the hearing officer shall prepare and submit findings and recommendations to the department.

(c) (1) The Certificate Action Review Board consists of the following three members: a chairperson appointed by the director of the department, a member appointed by the Commissioner of the California Highway Patrol, and a member appointed by the Superintendent of Public Instruction.

(2) After a hearing, the board shall review the findings and recommendations of the referee and make a decision concerning disposition of the action taken by the department, which decision shall be final.

SEC. 38. Section 13372 is added to the Vehicle Code, to read:

13372. (a) The department shall deny an ambulance driver certificate if any of the following apply to the applicant:

(1) Is required to register as a sex offender under Section 290 of the Penal Code for any offense involving force, violence, threat, or intimidation.

(2) Habitually or excessively uses or is addicted to narcotics or dangerous drugs.

(3) Is on parole or probation for any felony, theft, or any crime involving force, violence, threat, or intimidation.

(b) The department may deny an ambulance driver certificate if any of the following apply to the applicant:

(1) Has been convicted during the preceding seven years of any offense punishable as a felony or has been convicted during that period of any theft.

(2) Has committed any act involving moral turpitude, including fraud or intentional dishonesty for personal gain, within the preceding seven years.

(3) Habitually and excessively uses intoxicating beverages.

(4) Has been convicted within the preceding seven years of any offense relating to the use, sale, possession, or transportation of narcotics or addictive or dangerous drugs, or of any misdemeanor involving force, violence, threat, or intimidation.

(5) Is on probation to the department for a cause involving the unsafe operation of a motor vehicle.

(6) Within the three years immediately preceding the application has had his or her driver's license suspended or revoked by the department for a cause involving the unsafe operation of a motor vehicle, or, within the same period, has been convicted of any of the following:

(A) Failing to stop and render aid in an accident involving injury or death.

(B) Driving under the influence of intoxicating liquor, any drug, or under the combined influence of intoxicating liquor and any drug.

(C) Reckless driving, or reckless driving involving bodily injury.

(7) Has knowingly falsified or failed to disclose a material fact in his and her application. Applicants refused certification under this provision shall not be issued an ambulance driver certificate within 12 months of that refusal.

(8) Has been involved as a driver in any motor vehicle accident causing death or bodily injury or in three or more motor vehicle accidents during the preceding one-year period.

(9) Does not meet minimum medical standards specified in this code or in regulations adopted pursuant to this code.

(10) Has demonstrated irrational behavior or incurred a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected of an ambulance driver may be impaired.

(11) Has violated any provision of this code or any rule or regulation adopted by the Commissioner of the California Highway Patrol relating to the operation of emergency ambulances during the preceding one-year period.

(12) Has committed any act that warrants dismissal, as provided in Section 13373.

(c) The department may revoke or suspend the ambulance driver certificate of any person who gives any cause, before or after issuance of the certificate, for either mandatory or discretionary refusal of certification.

SEC. 39. Section 13373 is added to the Vehicle Code, to read:

13373. The receipt of satisfactory evidence of any violation of Article 1 (commencing with Section 1100) of Subchapter 5 of Chapter 2 of Title 13 of the California Code of Regulations, the Vehicle Code, or any other applicable law that would provide grounds for denial, suspension, or revocation of an ambulance

driver's certificate or evidence of an act committed involving intentional dishonesty for personal gain or conduct contrary to justice, honesty, modesty, or good morals, may be sufficient cause for the dismissal of any ambulance driver or attendant. Dismissal of a driver or attendant under this section shall be reported by the employer to the Department of Motor Vehicles at Sacramento within 10 days.

SEC. 40. Section 13374 is added to the Vehicle Code, to read:

13374. (a) Whenever the department refuses to issue or renew, or suspends or revokes, an ambulance driver certificate for any cause, the person involved may, within 10 days after receiving notification of the action, submit a written request for a hearing. Upon receipt of the request, the department shall appoint a referee who shall conduct an informal hearing in accordance with Section 14104. Failure to request a hearing within 10 days after receiving a notice given under this section is a waiver of the right to a hearing. A request for a hearing shall not operate to stay the action for which notice is given.

(b) Upon conclusion of an informal hearing, the referee shall prepare and submit findings and recommendations through the department to a committee of three members one each appointed by the Director of the Emergency Medical Service Authority, the director, and the Commissioner of the California Highway Patrol with the appointee of the Commissioner of the California Highway Patrol serving as chairperson. After a review of the findings and recommendations, the committee shall render a final decision on the action taken, and the department shall notify the person involved of the decision.

SEC. 41. Section 13375 is added to the Vehicle Code, to read:

13375. For the purposes of this article, any plea or verdict of guilty, plea of nolo contendere, or court finding of guilt in a trial without a jury, or forfeiture of bail, is deemed a conviction, notwithstanding subsequent action under Section 1203.4 or 1203.4a of the Penal Code allowing withdrawal of the plea of guilty and entering a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation or information.

SEC. 42. Section 14100.1 is added to the Vehicle Code, to read:

14100.1. Hearings granted on refusal, suspension, or revocation of a passenger transportation vehicle or hazardous materials endorsement, or farm labor vehicle certificate shall be conducted according to Chapter 3 (commencing with Section 13800) of Division 6.

SEC. 43. Section 15210 of the Vehicle Code is amended to read:

15210. Notwithstanding any other provision of this code, as used in this chapter:

(a) "Commercial driver's license" means a driver's license issued by a state or other jurisdiction, in accordance with the standards contained in Part 383 of Title 49 of the Code of Federal Regulations, which authorizes the licenseholder to operate a class or type of

commercial motor vehicle.

(b) (1) "Commercial motor vehicle" means any vehicle or combination of vehicles which requires a class A or class B license, or a class C license with an endorsement issued pursuant to paragraph (4) of subdivision (a) of Section 15278.

(2) "Commercial motor vehicle" does not include any of the following:

(A) A recreational vehicle, as defined in Section 799.24 of the Civil Code.

(B) Military equipment operated by noncivilian personnel, which is owned or operated by the United States Department of Defense, including the National Guard, as provided in Parts 383 and 391 of Title 49 of the Code of Federal Regulations.

(C) An implement of husbandry operated by a person who is not required to obtain a driver's license under this code.

(D) Vehicles operated by persons exempted pursuant to Section 25163 of the Health and Safety Code or a vehicle operated in an emergency situation at the direction of a peace officer pursuant to Section 2800.

(c) "Controlled substance" has the same meaning as defined by the federal Controlled Substances Act (21 U.S.C. Sec. 802).

(d) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(e) "Employer" means any person, including the United States, a state, or political subdivision of a state, who owns or leases a commercial motor vehicle or assigns drivers to operate such a vehicle. A person who employs himself or herself as a commercial vehicle driver is considered to be both an employer and a driver for purposes of this chapter.

(f) "Felony" means an offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.

(g) "Gross combination weight rating" means the value specified by the manufacturer as the maximum loaded weight of a combination or articulated vehicle. In the absence of a value specified by the manufacturer, gross vehicle weight rating will be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed units and any load thereon.

(h) "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single vehicle, as defined in Section 390.

(i) "Serious traffic violation" includes either of the following:

(1) Excessive speeding, as defined pursuant to the federal Commercial Motor Vehicle Safety Act (P.L. 99-570).

(2) Reckless driving, as defined pursuant to the federal Commercial Motor Vehicle Safety Act (P.L. 99-570).

(3) A violation of any state or local law involving the safe operation of a motor vehicle, arising in connection with a fatal traffic accident.

(4) Any other similar violation of a state or local law involving the

safe operation of a motor vehicle, as defined pursuant to the Commercial Motor Vehicle Safety Act (Title XII of P.L. 99-570).

In the absence of a federal definition, existing definitions under this code shall apply.

(j) "State" means a state of the United States or the District of Columbia.

(k) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous material within a tank that is permanently or temporarily attached to the vehicle or the chassis, including, but not limited to, cargo tanks and portable tanks, as defined in Part 171 of Title 49 of the Code of Federal Regulations. This definition does not include portable tanks having a rated capacity under 1,000 gallons.

SEC. 44. Section 15242 of the Vehicle Code is amended to read:

15242. A person who is self-employed as a commercial motor vehicle driver shall comply with both the requirements of this chapter pertaining to employers and those pertaining to employees.

SEC. 45. Section 15250 of the Vehicle Code is amended to read:

15250. (a) No person shall operate a commercial motor vehicle unless that person has in his or her immediate possession a valid commercial driver's license of the appropriate class.

(b) No person may be issued a commercial driver's license until he or she has passed a written and driving test for the operation of a commercial motor vehicle which complies with the minimum federal standards established by the federal Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570) and Part 383 of Title 49 of the Code of Federal Regulations, and has satisfied all other requirements of that act as well as any other requirements imposed by this code.

(c) The tests shall be prescribed and conducted by or under the direction of the department. The department may allow an employer to administer the driving test part of the examination required under this section and Section 15275 if the following conditions are met:

(1) The tests given by the third party are the same as those which would otherwise be given by the department.

(2) The third party has an agreement with the department with at least the following provisions:

(A) Authorization for the Federal Highway Administration, or its representative. and the department, or its representative, to conduct random examinations, inspections, and audits without prior notice.

(B) Permission for the department, or its representative, to conduct onsite inspections at least annually.

(C) A requirement that all third-party examiners meet the same qualification and training standards as the department's examiners, to the extent necessary to conduct the driving skill tests in compliance with the requirements of Part 383 of Title 49 of the Code of Federal Regulations.

(D) The department may cancel, suspend, or revoke the

agreement with a third-party tester if the third-party tester fails to comply with the standards for the commercial driver's license testing program, or with any other term of the third-party agreement, upon 15 days prior written notice of the action to cancel, suspend, or revoke the agreement by the department to the third party. Any action to appeal or review any order of the department canceling, suspending, or revoking a third-party testing agreement shall be brought in a court of competent jurisdiction under Section 1085 of the Code of Civil Procedure, or as otherwise permitted by the laws of this state. The action shall be commenced within 90 days from the effective date of the order.

(E) Any third-party tester whose agreement has been canceled pursuant to subparagraph (D) may immediately apply for a third-party testing agreement.

(F) A suspension of a third-party testing agreement pursuant to subparagraph (D) shall be for a term of less than 12 months as determined by the department. After the period of suspension, the agreement shall be reinstated upon request of the third-party tester.

(G) A revocation of a third-party testing agreement pursuant to subparagraph (D) shall be for a term of not less than one year. A third-party tester may apply for a new third-party testing agreement after the period of revocation and upon submission of proof of correction of the circumstances causing the revocation.

(H) Authorization for the department to charge the employer a fee, as determined by the department, which is sufficient to defray the actual costs incurred by the department for administering and evaluating the employer testing program, and for carrying out any other activities deemed necessary by the department to assure sufficient training for the drivers participating in the program.

(3) The tests given by the third party shall not be accepted in lieu of tests prescribed and conducted by the department for applicants for a passenger vehicle endorsement specified in paragraph (2) of subdivision (a) of Section 15278, if the applicant operates or will operate a tour bus.

(d) Commercial driver license applicants who take and pass driving tests administered by a third party shall provide the department with certificates of driving skill satisfactory to the department that the applicant has successfully passed the driving tests administered by the third party.

(e) Implementation dates for the issuance of a commercial driver's license pursuant to this chapter may be established by the department as it determines is necessary to accomplish an orderly commercial driver license program.

SEC. 46. Section 15250.5 of the Vehicle Code, as added by Chapter 62 of the Statutes of 1990, is amended to read:

15250.5. (a) No person shall operate firefighting equipment unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle operated, or a license issued pursuant to subdivision (b).

(b) The department may issue a restricted driver's license for the appropriate class of vehicle to a firefighter for the operation of firefighting equipment. The restricted license shall be valid only for operating (1) firefighting equipment within this state, or in another state during a response under a mutual aid pact, or (2) any vehicle for which a class 3 driver's license is required.

(c) The restricted firefighter's license may be issued only to an applicant qualified by examination prescribed and conducted by the department.

The pretrip inspection and driving test required to receive the license shall be the same as required to obtain a license under Section 15250.

The written examination shall be developed by the department with the cooperation of the State Fire Marshal. The department shall include a sufficient number of questions from the examinations required to obtain a license under Section 15250 to ensure that passing the special examination under this section assures a level of safety comparable to examinations given under Section 15250.

(d) In lieu of a report of medical examination required by Sections 12804 and 12804.9, an applicant for a restricted license issued pursuant to subdivision (b) shall, upon application and every two years thereafter, submit medical information on a form approved by the department.

(e) Upon application for issuance of an original driver's license pursuant to subdivision (b), there shall be paid to the department a fee of twenty-five dollars ($25).

(f) A "firefighter" is any person employed as such by a federal or state agency or by a regularly organized fire department of a city, county, city and county, or district, or registered as a volunteer member of a regularly organized fire department having official recognition of the city, county, city and county, or district in which the department is located.

(g) "Firefighting equipment" means a motor vehicle used to travel to and to suppress fires, or to transport equipment used to suppress fires, and which is owned by, or under the exclusive control of, a federal or state agency, a regularly organized fire department of a city, county, city and county, or district, or a volunteer fire department having official recognition of the city, county, city and county, or district in which the department is located.

(h) For purposes of the penalties and sanctions prescribed by Article 7 (commencing with Section 15300), the operation of firefighting equipment under a license issued pursuant to subdivision (b) is deemed to be the operation of a commercial motor vehicle.

SEC. 46.5. Section 15275 of the Vehicle Code is amended to read:

15275. (a) No person may operate a commercial motor vehicle described in this chapter unless that person has in his or her possession a valid commercial driver's license for the appropriate class, and an endorsement issued by the department to permit the operation of the vehicle.

(b) An endorsement to drive vehicles specified in this article shall be issued only to applicants qualified by examinations prescribed by the department and that meet the minimum standards established in Part 383 of Title 49 of the Code of Federal Regulations.

(c) The department may deny, suspend, revoke, or cancel an endorsement to drive vehicles specified in this article when the applicant does not meet the qualifications for the issuance or retention of the endorsement.

(d) During the implementation of this article, from January 1, 1989, through December 31, 1992, persons holding a class 1, class 2, or class 3 license issued pursuant to Section 12804 may continue to operate those vehicles appropriate to the class of license they hold without obtaining an endorsement issued under this article until the expiration date of their class 1, class 2, or class 3 license.

SEC. 47. Section 15278 of the Vehicle Code is amended to read:

15278. (a) A driver is required to obtain an endorsement issued by the department to operate any commercial motor vehicle which is any of the following:

(1) A double trailer.

(2) A passenger transportation vehicle which includes, but is not limited to, a bus, farm labor vehicle, or general public paratransit vehicle when designed, used, or maintained to carry more than 10 persons including the driver.

(3) A tank vehicle.

(4) A vehicle carrying hazardous materials which is required to display placards or markings pursuant to Section 27903 or which is hauling hazardous waste, as defined in Sections 25115 and 25117 of the Health and Safety Code unless the driver is exempt from the endorsement requirement as provided in subdivision (b). This paragraph does not apply to any person operating an implement of husbandry who is not required to obtain a driver's license under this code.

(b) This section does not apply to any person exempted pursuant to Section 25163 of the Health and Safety Code or to any person operating a vehicle in an emergency situation at the direction of a peace officer pursuant to Section 2800.

SEC. 48. Section 36101 of the Vehicle Code is amended to read:

36101. The following farm vehicles are exempt from registration, if they have and display an identification plate as specified in Section 5014, and the vehicles shall not be deemed to be implements of husbandry and they shall be subject to all equipment and device requirements as if registered:

(a) A motor vehicle of a size so as to require a permit under Section 35780 owned and operated by a farmer, designed and used exclusively for carrying or returning empty from carrying feed and seed products of farming, and used on a highway between one part of a farm to another part thereof or from one farm to another farm.

(b) A vehicle equipped with a water tank owned by a farmer and used exclusively to service his or her own implements of husbandry.

(c) A water tank truck, which is owned by a farmer, not operated for compensation, and used extensively in the conduct of agricultural operations, when used exclusively (1) for sprinkling water on dirt roads providing access to agricultural fields or (2) transportation of water for irrigation of crops or trees.

(d) A cotton module mover, as defined in Section 36012.

(e) A trailer which is equipped with a plenum chamber for the drying of agricultural commodities.

(f) Except as provided in subdivision (j) of Section 36005, a trap wagon, as defined in Section 36016, which is equipped with a fuel tank or tanks. The fuel tank or tanks shall not exceed 3,000 gallons total capacity.

(g) A forklift truck, operated by a farmer not for compensation. For purposes of this section, a hay-squeeze shall be deemed a forklift.

(h) A truck tractor or truck tractor and semitrailer combination specified in this subdivision which is owned by a farmer and operated on the highways only incidental to a farming operation and not for compensation. This subdivision applies only to truck tractors with a manufacturer's gross vehicle weight rating over 10,000 pounds that are equipped with all-wheel drive and off-highway traction tires on all wheels, and only to semitrailers used in combination with such a truck tractor and exclusively in the production or harvesting of melons. The vehicles specified in this subdivision shall not be operated in excess of 25 miles per hour on the highways.

The Commissioner of the California Highway Patrol may, by regulation, prohibit the vehicles specified in this subdivision from operating on specific routes. These vehicles shall not be operated laden on the highway for more than two miles from the point of origin and shall not be operated for more than 30 miles unladen on the highway from the point of origin. These vehicles shall not be operated for more than 15 miles unladen on the highway from the point of origin, unless accompanied by an escort vehicle to the front, and an escort vehicle to the rear.

SEC. 49. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1361

An act to add Section 41805.6 to the Health and Safety Code, to add Section 43610 to the Public Resources Code, and to add Section 13273.5 to the Water Code, relating to solid waste.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 27, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 41805.6 is added to the Health and Safety Code, to read:

41805.6. Notwithstanding Section 41805.5, a small city which operates a Class III solid waste disposal site is not required to submit a screening questionnaire or a solid waste air quality assessment test report pursuant to Section 41805.5 if the city has a population of less than 20,000 persons, the solid waste disposal site receives less than 20,000 tons of waste per year, the water table of the highest aquifer under the disposal site is 250 or more feet below the base of the disposal site and the water in the highest aquifer is not potable, and the site receives less than an average of 12 inches of rainfall per year.

This section applies only if the disposal site is operational and has been granted all required permits as of January 1, 1991, and if the site is located in Kings County.

SEC. 2. Section 43610 is added to the Public Resources Code, to read:

43610. Notwithstanding Article 3 (commencing with Section 43500) or this article, a small city which operates a Class III solid waste disposal site is not required to submit a postclosure maintenance plan or provide a fund for postclosure maintenance pursuant to Article 3 (commencing with Section 43500) of this article, if the city has a population of less than 20,000 persons, the solid waste disposal site receives less than 20,000 tons of waste per year, the water table of the highest aquifer under the disposal site is 250 of more feet below the base of the disposal site and the water in the highest aquifer is not potable, the site receives less than an average of 12 inches of rainfall per year, and the disposal site is closed in compliance with all state closure testing requirements at the time of closure.

This section applies only if the disposal site is operational and has been granted all required permits as of January 1, 1991, and if the site is located in Kings County.

SEC. 3. Section 13273.5 is added to the Water Code, to read:

13273.5. Notwithstanding Section 13273, a small city which operates a Class III solid waste disposal site is not required to submit a solid waste water quality assessment test report pursuant to Section 13273 if the city has a population of less than 20,000 persons, the solid waste disposal site receives less than 20,000 tons of waste per year, the

water table of the highest aquifer under the disposal site is 250 or more feet below the base of the disposal site and the water in the highest aquifer is not potable, and the site receives less than an average of 12 inches of rainfall per year.

This section applies only if the disposal site is operational and has been granted all required permits as of January 1, 1991, if the site is located in Kings County, and if the city has completed an initial solid waste water quality assessment test and a solid waste air quality assessment test which establish that no significant air or water contamination has occurred, and, in that event, the city shall be exempted from conducting further assessment tests for seven years, or any longer time specified by the regional board, after the date of the initial assessment tests.

CHAPTER 1362

An act to amend Sections 6261 and 6262 of, and to add Section 6263 to, the Revenue and Taxation Code, to amend Section 11713.1 of, and to add Section 11705.5 to, the Vehicle Code, and to amend Section 2 of Chapter 453 of the Statutes of 1990, relating to vehicles, and making an appropriation therefor, to take effect immediately, tax levy.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 6261 of the Revenue and Taxation Code, as added by Chapter 453 of the Statutes of 1990, is amended to read:

6261. The Legislature finds and declares as follows:

(a) Motor vehicles certified to meet California air quality standards (California-certified vehicles) are generally significantly more costly than otherwise equivalent vehicles sold elsewhere.

(b) Motor vehicles generally are a major cause of poor air quality. However, California-certified vehicles have a less deleterious impact on air quality than other vehicles because California-certified vehicles are designed and manufactured to meet California's motor vehicle emission standards which are the most stringent emission standards in the nation and are, therefore, less polluting. Poor air quality imposes substantial costs on health services and environmental and other General Fund programs.

(c) Drivers of California-certified vehicles, in addition to higher vehicle acquisition costs, pay an added penalty because California-certified vehicles generally achieve lower fuel economy, resulting in a higher motor vehicle fuel tax burden.

(d) In order to ensure equity between owners of California-certified vehicles and other vehicles, provide funding for

environmental programs, and to promote good health and safety standards for the residents of this state, it is appropriate to enact a motor vehicle smog impact fee on non-California certified vehicles.

SEC. 2. Section 6262 of the Revenue and Taxation Code, as added by Chapter 453 of the Statutes of 1990, is amended to read:

6262. (a) In addition to any other fees and taxes required to be paid by the Vehicle Code and this code at the time of the registration of a motor vehicle, as defined in Section 415 of the Vehicle Code, a person making application to register a 1975 or subsequent model year gasoline-powered motor vehicle or a 1980 or subsequent model year diesel-powered motor vehicle which is subject to the requirements of Section 4000.2 of the Vehicle Code shall pay to the Department of Motor Vehicles a motor vehicle smog impact fee of three hundred dollars ($300) for any such motor vehicle which, prior to the date of application, was last registered outside this state, unless the motor vehicle has been certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code. This subdivision does not authorize the registration of motor vehicles which are prohibited from being brought into this state pursuant to Article 1.5 (commencing with Section 43150) of Chapter 2 of Part 5 of Division 26 of the Health and Safety Code.

(b) The determination that a vehicle is subject to the fee imposed pursuant to this section shall be made by the Department of Motor Vehicles, or its designee.

(1) For purposes of this chapter, if a motor vehicle does not have affixed a vehicle emission control label from which the Department of Motor Vehicles may determine whether the vehicle is California-certified, the vehicle shall be presumed not to be California-certified unless confirmed to be by the manufacturer.

(2) Any manufacturer of light-duty motor vehicles doing business in California shall provide information, within 30 days of the receipt of a request from the Department of Motor Vehicles, stating whether a vehicle, identified in the request by the vehicle identification number (VIN) assigned by the manufacturer in accordance with federal law, has been certified for sale in California pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code.

(3) For purposes of this section, "vehicle emission control label" means the permanent label vehicle manufacturers are required to affix to motor vehicles certified by the State Air Resources Board for sale in California in accordance with Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code and pursuant to Sections 1965 and 1965.5 of Title 13 of the California Code of Regulations.

(c) After deduction of all costs incurred by the department in carrying out this section which have been approved by the Department of Finance, the revenues received pursuant to this section shall be deposited in the General Fund.

(d) This section does not apply to a commercial vehicle, as defined in Section 260 of the Vehicle Code, with an unladen weight in excess of 6,000 pounds.

(e) This section does not apply to any vehicle owned by a person who, pursuant to military orders or following discharge from or release from active duty in the armed forces of the United States, enters California for the purpose of establishing or reestablishing residence or accepting gainful employment, if the vehicle was acquired by the owner in a foreign jurisdiction where those military orders required the owner's presence.

(f) Notwithstanding any other provision of law, the fee imposed pursuant to subdivision (a) is imposed pursuant to the Sales and Use Tax Law.

SEC. 3. Section 6263 is added to the Revenue and Taxation Code, to read:

6263. No person, other than the manufacturer who has received authorization to sell the motor vehicle in California or a person authorized by the manufacturer, shall install a vehicle emission control label on any motor vehicle. No person shall remove, alter, deface, obscure, or destroy a vehicle emission control label or any label required to be affixed to any motor vehicle certified pursuant to the National Emissions Standards Act (42 U.S.C. Sec. 7521 et seq., and Subpart A (commencing with Sec. 86.078-3) of Part 86 of Title 40 of the Code of Federal Regulations) for the purpose of avoiding payment of the fee required by Section 6262. Any person who violates any provision of this section is guilty of a misdemeanor and is subject to a fine of not more than five thousand dollars ($5,000) or imprisonment in the county jail for not more than one year, or both that fine and imprisonment.

SEC. 4. Section 11705.5 is added to the Vehicle Code, to read:

11705.5. (a) The department, after notice and hearing, may suspend or revoke the license issued to a manufacturer upon determining that the manufacturer has violated paragraph (2) of subdivision (b) of Section 6262 of the Revenue and Taxation Code.

(b) The hearing provided for in subdivision (a) shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 5. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is unlawful and a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) To advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) To advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except sales tax, vehicle registration fees, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute, finance charges, and any dealer documentary preparation charge. The

dealer documentary preparation charge shall not exceed thirty-five dollars ($35).

(c) To exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer documentary preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(d) To represent the dealer documentary preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) To fail to sell a vehicle to any person at the advertised total price, exclusive of sales tax, including, but not limited to, any applicable motor vehicle smog impact fee, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer documentary preparation charge, which charges shall not exceed thirty-five dollars ($35) for the documentary preparation charge and twenty-five dollars ($25) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) To advertise for sale as new any new vehicle of a line-make for which the dealer does not hold a franchise.

This subdivision does not apply to any transaction involving a mobilehome as defined in Section 396 of this code, a recreational vehicle as defined in Section 18010.5 of the Health and Safety Code, a commercial coach as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification as defined in Section 38012, or a commercial vehicle as defined in Section 260.

(g) To sell a park trailer, as defined in subdivision (f) of Section 799.24 of the Civil Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) To advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) To advertise vehicles and related goods or services with intent not to supply reasonably expectable demand, unless the

advertisement discloses a limitation of quantity.

(j) To use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) To require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(*l*) To advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) To misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) To advertise a vehicle at a specified amount above, below, or at the manufacturer's or distributor's invoice price to the dealer, unless the advertisement clearly and conspicuously states that the invoice amount may exceed the actual dealer cost because of allowances provided to the dealer by the manufacturer or distributor.

(o) To violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) To make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(q) To affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additonal price of each item. If the supplemental sticker price is greater than the sum of the manufactuer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) To advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other dealer in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) To advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

SEC. 6. Section 2 of Chapter 453 of the Statutes of 1990 is amended to read:

Sec. 2. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect. However, this act shall become operative on October 1, 1990.

SEC. 7. The sum of three hundred eight thousand dollars ($308,000) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles for costs incurred by the department in carrying out Sections 6261, 6262, and 6263 of the Revenue and Taxation Code and Section 11705.5 of the Vehicle Code.

SEC. 8. Sections 1, 2, 3, and 4, and 5 of this act shall become operative on October 15, 1990.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 10. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1363

An act to amend Sections 56.30, 232, 235, 274, 7013, and 7017 of, to add Chapter 2 (commencing with Section 220.10) and Chapter 3 (commencing with Section 230.10) to, to repeal Sections 224.47, and 224.50 of, and to repeal Chapter 2 (commencing with Section 221) of, Title 2 of Part 3 of Division 1 of, the Civil Code, to amend Section 124 of the Code of Civil Procedure, to amend Sections 10125.5, 10433.2, and 10433.3 of the Health and Safety Code, to amend Sections 280 and 11170 of the Penal Code, to amend Sections 366.26, 16101, 16106, 16120, and 16507.6 of, and to repeal Chapter 2.3 (commencing with Section 16140) of Part 4 of Division 9 of, the Welfare and Institutions Code, relating to adoption.

[Approved by Governor September 25, 1990. Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 56.30 of the Civil Code is amended to read:

56.30. The disclosure and use of the following medical information shall not be subject to the limitations of this part:

(a) (Mental health and developmental disabilities) Information and records obtained in the course of providing services under Division 4 (commencing with Section 4001), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) of the Welfare and Institutions Code.

(b) (Public social services) Information and records which are subject to Sections 10850, 14124.1, and 14124.2 of the Welfare and Institutions Code.

(c) (State health services, communicable diseases, developmental disabilities) Information and records maintained pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of the Health and Safety Code and pursuant to Division 4 (commencing with Section 3000) of the Health and Safety Code.

(d) (Licensing and statistics) Information and records maintained pursuant to Division 2 (commencing with Section 1200) and Division 9 (commencing with Section 10000) of the Health and Safety Code; pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code; and pursuant to Section 222.26, 224.70, or 226.35 of the Civil Code.

(e) (Medical survey, workers' safety) Information and records acquired and maintained or disclosed pursuant to Sections 1380 and 1382 of the Health and Safety Code and pursuant to Division 5 (commencing with Section 6300) of the Labor Code.

(f) (Industrial accidents) Information and records acquired, maintained, or disclosed pursuant to Division 1 (commencing with

Section 50), Division 4 (commencing with Section 3201), Division 4.5 (commencing with Section 6100), and Division 4.7 (commencing with Section 6200) of the Labor Code.

(g) (Law enforcement) Information and records maintained by a health facility which are sought by a law enforcement agency under Chapter 3.5 (commencing with Section 1543) of Title 12 of Part 2 of the Penal Code.

(h) (Investigations of employment accident or illness) Information and records sought as part of an investigation of an on-the-job accident or illness pursuant to Division 5 (commencing with Section 6300) of the Labor Code or pursuant to Section 2950 of the Health and Safety Code.

(i) (Alcohol or drug abuse) Information and records subject to the federal alcohol and drug abuse regulations (Part 2 (commencing with Section 2.1) of subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations) or to Section 11977 of the Health and Safety Code dealing with narcotic and drug abuse.

(j) (Patient discharge data) Nothing in this part shall be construed to limit, expand, or otherwise affect the authority of the California Health Facilities Commission to collect patient discharge information from health facilities pursuant to Section 441.18 of the Health and Safety Code.

(k) Medical information and records disclosed to, and their use by, the Insurance Commissioner, the Division of Industrial Accidents, the Workers' Compensation Appeals Board, or the Department of Insurance.

SEC. 2. Chapter 2 (commencing with Section 221) of Title 2 of Part 3 of Division 1 of the Civil Code is repealed.

SEC. 3. Chapter 2 (commencing with Section 220.10) is added to Title 2 of Part 3 of Division 1 of the Civil Code, to read:

CHAPTER 2. ADOPTION OF UNMARRIED MINORS

Article 1. General Provisions

220.10. The Legislature finds and declares as follows:

(a) This act is not intended to make any substantive or procedural changes in the existing law.

(b) This act reorganizes the adoption statutes and repeals obsolete references.

(c) The purpose of this act is to improve readability, provide logical sequencing, and create separate articles for agency, independent, intercountry, and step-parent adoptions and a separate chapter for adult adoptions, and to clarify definitions.

(d) This act makes the adoption law more easily understood and usable by the State Department of Social Services, adoption agencies, the courts, persons working in adoptions, and the public in general.

(e) The Legislature does not intend to lose legislative history or judicial precedent applicable to statutory provisions replaced by this

act.

220.20. As used in this chapter, the following terms have the following meanings:

(a) "Adoptive parent" means a person who has petitioned the court for, and obtained, an order or final decree for the adoption of a particular child or children.

(b) "Agency adoption" means the adoption of a child, other than an intercountry adoption, in which the department or an agency licensed by the department is a party to, or joins in, the petition for adoption.

(c) "Applicant" means a person who has submitted a written application to adopt a child from the department or licensed adoption agency and who is being considered by the department or agency for the adoptive placement of a child.

(d) "Birth parent" means the biological parent or, in the case of a child previously adopted, the adoptive parent.

(e) "Child" and "children" mean minor child and minor children, respectively.

(f) "Delegated county adoption agency" means a licensed county adoption agency that has agreed to provide those services described in Article 3 (commencing with Section 224.10).

(g) "Department" means the State Department of Social Services.

(h) "Full-service adoption agency" means any licensed entity engaged in the business of providing adoption services, which does all of the following:

(1) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(2) Assesses the birth parents, prospective adoptive parents, or child.

(3) Places children for adoption.

(4) Supervises adoptive placements.

Private full-service adoption agencies shall be organized and operated on a nonprofit basis. Full-service adoption agencies may provide services to birth parents or prospective adoptive parents pursuant to Section 224.50 until January 1, 1994.

(i) "Independent adoption" means the adoption of a child in which neither the department nor an agency licensed by the department is a party to, or joins in, the petition for adoption.

(j) "Intercountry adoption" means the adoption of a foreign-born child for whom federal law makes a special immigration visa available. Intercountry adoption includes completion of the adoption in the child's native country or completion of the adoption in California.

(k) "Licensed adoption agency" means an agency licensed by the department to provide adoption services, including a licensed county adoption agency and a licensed private adoption agency.

(*l*) "Noncustodial adoption agency" means any licensed entity

engaged in the business of providing adoption services, which does all of the following:

(1) Assesses the prospective adoptive parents.

(2) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved prospective adoptive applicants.

(3) Cooperatively supervises adoptive placements with a full-service adoption agency, but does not disrupt a placement or remove a child from a placement.

Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis. Noncustodial adoption agencies may provide services to birth parents or prospective adoptive parents pursuant to Section 224.50 until January 1, 1994.

(m) "Personal knowledge" includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal name, age, religion, race or ethnicity, employment, whether other children or adults reside in their home, any health conditions curtailing their normal daily activities or reducing their normal life expectancy, and their general area of residence or, upon request, their address.

(n) "Petitioner" means a prospective adoptive parent who has filed an adoption petition with the superior court pursuant to the provisions of this chapter in the county within which he or she resides.

(o) "Place for adoption" means, in the case of an independent adoption, the selection of a prospective adoptive parent or parents for a child by the birth parent or parents.

(p) "Prospective adoptive parent" means a person who has filed or intends to file a petition to adopt a child who has been or who is to be placed in his or her physical care.

(q) "Special needs child" means a child whose adoption without financial assistance would be unlikely because of adverse parental background, ethnic background, race, color, language, membership in a sibling group which should remain intact, mental, physical, medical, or emotional handicaps or age of three years or more.

(r) "Stepparent adoption" means the adoption of child by a stepparent when one birth parent retains his or her custody and control of the child.

221.10. Any unmarried minor child may be adopted by any adult person, in the cases and subject to the rules prescribed in this chapter.

221.12. (a) Except as otherwise provided in subdivision (b), the person adopting a child shall be at least 10 years older than the person adopted.

(b) If the court is satisfied that the adoption of a child by a stepparent, or by a sister, brother, aunt, uncle, or cousin-german and, if that person is married, by that person and his or her spouse, is in the best interest of the parties and is in the public interest, it may

approve such an adoption without regard to the ages of the child and the prospective adoptive parent or parents.

221.13. The consent of a child, if over the age of 12 years, is necessary to his or her adoption.

221.14. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife, nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving that consent.

221.20. A child having a presumed father under subdivision (a) of Section 7004 cannot be adopted without the consent of his or her parents if living. However, if one birth parent has been awarded custody by judicial decree, or has custody by agreement of the birth parents, and the other birth parent for a period of one year willfully fails to communicate with and to pay for the care, support, and education of the child when able to do so, then the birth parent having custody alone may consent to the adoption, but only after the birth parent not having custody has been served with a copy of a citation in the manner provided by law for the service of a summons in a civil action that requires him or her to appear at the time and place set for the appearance in court under Section 221.62, 221.63, 221.65, 222.78, 224.95, 226.55, or 227.60. Failure of a birth parent to pay for the care, support, and education of the child for the period of one year or failure of a birth parent to communicate with the child for the period of one year is prima facie evidence that the failure was willful and without lawful excuse. A child with no presumed father under subdivision (a) of Section 7004 cannot be adopted without the consent of his or her mother if living. Notwithstanding other provisions of this section, the consent of a birth father or mother is not necessary in the following cases:

(a) When the birth father or mother has been judicially deprived of the custody and control of the child (1) by order of the court declaring the child to be free from the custody and control of either birth parent or both parents pursuant to Chapter 4 (commencing with Section 232) of Title 2 of Part 3 of Division 1, or Section 366.25 or 366.26 of the Welfare and Institutions Code, or (2) by similar order of the court of another jurisdiction, pursuant to any law of that jurisdiction authorizing the order; or when the birth father or mother has, in a judicial proceeding in another jurisdiction, voluntarily surrendered his or her right to the custody and control of the child pursuant to any law of that jurisdiction providing for the surrender.

(b) When the birth father or mother of any child has deserted the child without provision for identification of the child.

(c) When the birth father or mother of any child has relinquished the child for adoption as provided in Section 222.10; or where the birth father or mother has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction pursuant to the law of that jurisdiction.

221.30. All forms adopted by the department authorizing the release of an infant from a health facility to the custody of persons other than the person entitled to custody of the child pursuant to Section 197 and authorizing these other persons to obtain medical care for the infant shall contain a statement in boldface type delineating the various types of adoptions available, and the birth parents' rights with regard thereto, including, but not limited to, rights with regard to revocation of consent to adoption.

221.40. (a) Any person who, or organization that, without holding a valid and unrevoked license to place children for adoption issued by the department, advertises in any periodical or newspaper, by radio, or other public medium, that he, she, or it will place children for adoption, or accept, supply, provide or obtain children for adoption, or that causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor.

(b) Any person other than a birth parent who, or any organization, association, or corporation that, without holding a valid and unrevoked license to place children for adoption issued by the department, places any child for adoption is guilty of a misdemeanor.

221.50. The petitioners in any proceeding seeking the adoption of a child shall file with the court a full accounting report of all disbursements of anything of value made or agreed to be made by them or on their behalf in connection with the birth of the child, the placement of the child with the petitioners, any medical or hospital care received by the birth mother of the child or by the child in connection with the birth of the child, any other expenses of either birth parent of the child, or the adoption. The accounting report shall be made under penalty of perjury and shall be submitted to the court on or before the date set by the court for the hearing on the adoption petition, unless an extension of time is granted by the courts.

The accounting report shall be itemized in detail and shall show the services relating to the adoption or to the placement of the child for adoption which were received by the petitioners, by either birth parent of the child, by the child, or by any other person for whom payment was made by or on behalf of the petitioners. The report shall also include the dates of each payment, the names and addresses of each attorney, doctor, hospital, licensed adoption agency, or other person or organization who received any funds of the petitioners in connection with the adoption or the placement of the child with them, or participated in any way in the handling of those funds, either directly or indirectly.

The provisions of this section shall not apply to an adoption by a stepparent when one birth or adoptive parent retains his or her custody and control of the child.

221.60. All superior court hearings in adoption proceedings shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their witnesses, counsel, and representatives of the agencies present to perform their official

duties under the laws governing adoptions.

221.62. The person or persons desiring to adopt a child, and the child proposed to be adopted, shall appear before the court.

221.63. (a) The court shall examine all persons appearing before it pursuant to this chapter. The examination of each such person shall be conducted separately but within the physical presence of each such other person or persons unless the court, in its discretion, shall order otherwise.

(b) The party or parties adopting shall execute or acknowledge an agreement in writing that the child shall be treated in all respects as the lawful child of the party or parties.

(c) If satisfied that the interest of that child will be promoted by the adoption, the court may thereupon make and enter an order of adoption of the child by the prospective adoptive parent or parents, and the child and the adoptive parents shall thereupon and thereafter sustain toward each other the legal relationship of parent and child and have all the rights and be subject to all the duties of that relation.

221.65. (a) If the prospective adoptive parent is commissioned or enlisted in the military service, or auxiliary thereof, of the United States, or of any of its allies, or in the American Red Cross, so that it is impossible or impracticable, because of the prospective adoptive parent's absence from the State of California, or otherwise, for him or her to make an appearance in person, and the circumstances are established by satisfactory evidence, the appearance may be made for the prospective adoptive parent by his or her counsel, commissioned and empowered in writing so to do. The power of attorney may be incorporated in the petition for adoption.

(b) When the prospective adoptive parent is permitted to appear by counsel, the agreement may be executed and acknowledged by the counsel for the absent party, or may be executed by the absent party before a notary public, or any other person authorized to take acknowledgements including the persons authorized by Sections 1183 and 1183.5.

(c) When the prospective adoptive parent is permitted to appear by counsel, or otherwise, the court may, in its discretion, cause an examination of the prospective adoptive parent, other interested party, or witness to be made upon deposition, as it deems necessary. The deposition shall be taken upon commission, as prescribed by the Code of Civil Procedure, and the expense thereof shall be borne by the petitioner.

(d) The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition shall be filed in the office of the county clerk.

(e) The provisions of this section permitting a prospective adoptive parent, who is commissioned or enlisted in the military service, or auxiliary thereof, of the United States, or of any of its allies, or in the American Red Cross, to make an appearance through his or her counsel, commissioned and empowered in writing to do so, are

equally applicable to the spouse of a prospective adoptive parent who resides with the prospective adoptive parent outside of this state.

(f) When, pursuant to this section, neither prospective adoptive parent need appear before the court, the child proposed to be adopted need not appear. If the law otherwise requires that the child execute any document during the course of the hearing, the child may do so by and through counsel.

(g) When none of the parties appears, no order of adoption shall be made by the court until after a report has been filed with the court pursuant to Section 222.75, 224.42, 226.57, or 227.20.

221.70. Upon the request of the adoptive parents or the child, a county clerk may issue a certificate of adoption which states the date and place of adoption, the birthday of the child, the name of the adoptive parents, and the name which the child has taken. Unless the child has been adopted by a stepparent, the certificate shall not state the name of the birth parents of the child.

221.72. (a) Notwithstanding any other provision of law, an action may be brought in the superior court of the county in which the petitioner resides for the purpose of obtaining for a child adopted by the petitioner a new birth certificate which specifies thereon that a deceased spouse of the petitioner who was in the home at the time of the initial placement of the child is a parent of that child.

(b) In any action for adoption the petitioner may request that the new birth certificate specify thereon that a deceased spouse of the petitioner who was in the home at the time of the initial placement of the child is a parent of that child.

(c) The inclusion of the name of a deceased person in a birth certificate issued pursuant to a court order under this section shall not affect any matter of testate or intestate succession, and shall not be competent evidence on the issue of the relationship between the adopted child and the deceased person in any action or proceeding.

221.74. A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relationship.

221.76. The birth parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over the child.

221.80. The department shall adopt such rules and regulations as it determines are reasonably necessary to assure that a birth parent or parents of Indian ancestry, seeking to relinquish a child for adoption, provide sufficient information to the department or to the licensed adoption agency so that a certificate of degree of Indian blood can be obtained from the Bureau of Indian Affairs. The department shall immediately request a certificate of degree of Indian blood from the Bureau of Indian Affairs upon obtaining the information. A copy of all documents pertaining to the degree of

Indian blood and tribal enrollment, including a copy of the certificate of degree of Indian blood, shall become a permanent record in the adoption files and shall be housed in a central location and made available to authorized personnel from the Bureau of Indian Affairs when required to determine the adopted person's eligibility to receive services or benefits because of the adopted person's status as an Indian. This information shall be made available to the adopted person upon reaching the age of majority.

Article 2. Agency Adoptions

222.10. The birth father or mother may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or the licensed adoption agency. The relinquishment, when reciting that the person making it is entitled to the sole custody of the child, shall, when duly acknowledged before the officer, be prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

A birth parent who is a minor shall have the right to relinquish his or her child for adoption to a licensed adoption agency, and the relinquishment shall not be subject to revocation by reason of the birth parent's minority.

If a birth father or mother of a child resides outside the State of California and the child is being cared for and is placed for adoption by a licensed adoption agency, the birth father or mother may relinquish the child to the agency by a written statement signed by the birth father or mother before a notary on a form prescribed by the agency, and previously signed by an authorized official of the agency, which signifies the willingness of the agency to accept the relinquishment.

The relinquishment authorized by this section shall be of no effect until a certified copy is filed with the department. Upon filing with the department, the relinquishment is final and may be rescinded only by the mutual consent of the adoption agency and the birth parent or parents relinquishing the child.

The filing of the relinquishment with the department shall terminate all parental rights and responsibilities with regard to the child.

222.13. On or before the time a relinquishment is signed, the birth parent signing the relinquishment shall be advised verbally and in writing by the department or the licensed adoption agency, that he or she may, at any time in the future, request from the department or agency, all known information about the status of the child's adoption, except for personal, identifying information about the adoptive family. The birth parent shall be advised that this information includes, but is not limited to, all of the following: (1) whether the child has been placed for adoption, (2) the approximate

date that an adoption was completed, and (3) if the adoption was not completed or was vacated, for any reason, whether adoptive placement of the child is again being considered.

222.15. (a) The department shall adopt a statement to be presented to the birth parents at the time the relinquishment is signed and to prospective adoptive parents at the time of the home study which shall, in a clear and concise manner, in words calculated to assure the confidence of the birth parent in the integrity of the adoption process, communicate to the birth parent of a child who is the subject of an adoption petition all of the following facts:

(1) It is in the best interest of the child that the birth parent keep the department or the licensed adoption agency to whom the child was relinquished for adoption informed of any health problems that the parent develops that could affect the child.

(2) It is extremely important that the birth parent keep his or her address current with the department or the licensed adoption agency to whom the child was relinquished for adoption in order to permit a response to any inquiries to the department or licensed adoption agency concerning medical or social history.

(3) Section 229.40 of the Civil Code authorizes a person who has been adopted and who attains the age of 21 to request the department or the licensed adoption agency that joined in the petition for his or her adoption to disclose the name and address of his or her birth parent. Consequently, it is of the utmost importance that the birth parent indicate whether or not he or she wishes his or her name and address to be so disclosed by checking the appropriate box provided on the form.

(4) The birth parent may change his or her decision as to whether or not he or she wishes his or her name and address disclosed, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department or to the licensed adoption agency that joined in the petition for adoption.

(5) The relinquishment will be filed in the office of the county clerk of the county in which the adoption takes place. The file is not open to inspection by any persons other than the parties to the adoption proceedings, their attorneys, and the department, except upon order of the judge of the superior court.

(b) The department shall adopt a form to be signed by the birth parents at the time the relinquishment is signed which shall provide as follows:

"Section 229.40 of the Civil Code authorizes a person who has been adopted and who attains the age of 21 to petition the State Department of Social Services or the licensed adoption agency that joined in the petition for his or her adoption to obtain the name and address of his or her birth parent. Indicate by checking one of the boxes below whether or not you wish your name and address to be so disclosed:

☐ YES
☐ NO
☐ UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE"

222.18. Whenever the parental rights of a birth parent are terminated pursuant to Section 232 or 7017 of this code, or Section 366.25 or 366.26 of the Welfare and Institutions Code, the licensed adoption agency responsible for the adoptive placement of the child or the department shall send a written notice to the birth parent, if his or her address is known, which shall contain the following statement:

"You are encouraged to keep this agency informed of your current address in order to permit a response to any inquiry concerning medical or social history made by or on behalf of the child who was the subject of the court action terminating parental rights."

222.20. The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights shall be responsible for the care of the child, and shall be entitled to the exclusive custody and control of the child until an order of adoption has been granted. Any placement for temporary care, or for adoption, made by the department or a licensed adoption agency may be terminated at its discretion at any time prior to the granting of an order of adoption. In the event of termination of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the agency.

No petition may be filed to adopt a child relinquished to the department or a licensed adoption agency or a child declared free from the custody and control of either birth parent or both parents and referred to the department or a licensed adoption agency for adoptive placement, except by the prospective adoptive parents with whom the child has been placed for adoption by the department or licensed adoption agency. After the petition for adoption has been filed, the department or licensed adoption agency may remove the child from the prospective adoptive parents only with the approval of the court, upon motion by the department or a licensed adoption agency after notice to the prospective adoptive parents, supported by an affidavit or affidavits stating the grounds on which removal is sought. If the department or a licensed adoption agency refuses to consent to the adoption of a child by the person or persons with whom the department or licensed adoption agency placed the child for adoption, the superior court may nevertheless order the adoption if it finds that the refusal to consent is not in the best interest of the child.

Notwithstanding any other provision of law, if the child has been in foster care for a period of more than four months, the child has substantial emotional ties to the foster parent or parents, the child's removal from the foster parent or parents would be seriously

detrimental to the child's well-being, and the foster parent or parents make a written request to be considered to adopt the child, the foster parent or parents shall be considered with respect to that child along with all other prospective adoptive families. The department or agency shall take into consideration any relevant factors that it deems necessary in determining the adoptive placement which is in the best interests of the child.

The decision of the department or licensed adoption agency for the adoptive placement of the child shall be presumed to be in the best interests of the child. This presumption may be rebutted in an action, filed by the foster parent or parents, by a preponderance of the evidence that foster care has been provided by the requesting foster parent or parents for more than four months, that the child has substantial emotional ties to the foster parent or parents, and that the adoptive placement of the child with someone other than the foster parent or parents would be seriously detrimental to the child's well-being.

This subdivision does not apply to a child who has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

222.22. When, in the case of a child in the custody of a public agency or licensed adoption agency, it has been established that the persons whose consent to the adoption of that child is required by law are deceased, an action may be brought by the department or a licensed adoption agency requesting the court to make an order establishing that the requesting agency has the right to custody and control of the child and the authority to place the child for adoption. The agency bringing the action shall provide notice thereof in such form as shall be prescribed by the court to all known relatives of the child up to and including the third degree of lineal and collateral consanguinity.

This section shall not apply when a guardian of the person of the child has been appointed pursuant to nomination by a will.

222.26. (a) No agency shall place a child for adoption unless a written medical report on the child's medical background, and if available, so far as ascertainable, the medical background of the child's biological parents, has been submitted to the prospective adoptive parents and the prospective adoptive parents have acknowledged in writing the receipt of that report.

The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

(b) The department shall adopt regulations specifying the form and content of the report required by this section. In addition to any other material that may be required by the department, the form shall include inquiries designed to elicit information on any illness, disease, or defect of a genetic or hereditary nature. All licensed

adoption agencies shall cooperate with and assist the department in devising a plan that will effectuate the effective and discreet transmission to adoptees or prospective adoptive parents of pertinent medical information reported to the department or the licensed agency, upon the request of the person reporting the medical information.

222.30. (a) The department shall establish a statewide photo-listing service which shall serve all licensed adoption agencies in the state as a means of recruiting adoptive families for children who have been legally freed, and whose case plan goal is adoption. The photo-listing service shall maintain a book that, except as provided in this section, contains a photograph and description of each child who has been legally freed, and whose case plan goal is adoption. Registration of children with the photo-listing service and notification by the licensed adoption agency of changes in a child's photo-listing status shall be reflected in the book within 30 working days of receipt of the registration or notification.

(b) The department shall adopt regulations governing the operations of the photo-listing service and shall establish procedures for monitoring compliance with this section.

(c) The photo-listing service shall be provided to all licensed adoption agencies; adoption support groups; and state, regional, or national photo-listings or exchanges requesting copies of the photo-listing service.

(d) All legally freed children for whom adoption is the case plan shall be photo-listed, unless deferred as specified in subdivision (e) or (f). Licensed adoption agencies shall send a recent photograph and description of each legally freed child to the photo-listing service within 15 working days of the time a child is legally freed for adoption. When adoption has become the plan for a particular child, the agency may photo list that child prior to the child's becoming legally freed for adoption.

(e) A child shall be deferred from the photo-listing service when that child's foster parents or other identified individuals who have applied to adopt the child are meeting the adoption agency's requests for required documentation and are cooperating in the completion of a homestudy being conducted by the agency.

(f) A child who is 12 years old, or older, may be deferred from the photo-listing service if the child does not consent to being adopted.

(g) The department shall establish procedures for semiannual review of the photo-listing status of all legally freed children whose case plan goal is adoption, including those who are registered with the photo-listing service and those whose registration has been deferred.

(h) Within 15 working days following a one-year period in which a child is listed in the book, the agency shall submit a revised description and photograph of that child.

(i) Licensed adoption agencies shall notify the photo-listing service, by telephone, of any adoptive placements or of significant

changes in the child's photo-listing status within two working days of that change.

222.35. The department may adopt regulations which establish priorities for the placement of children for adoption which reflect consideration of the racial background, ethnic heritage, religion, and cultural heritage of the child and geographic proximity. These priorities shall not be the basis for undue delay in the placement of children, or for the disruption of stable long-term foster care placements. These priorities shall also not be construed as categorically prohibiting placement across lines of race, ethnicity, religion, cultural heritage, and geographic proximity.

This section shall not become operative if AB 548 of the 1989–90 Regular Session of the Legislature is enacted and adds Title 6 (commencing with Section 276) to Part 3 of Division 1 of the Civil Code.

222.40. The department or a licensed adoption agency shall require all persons filing an application to adopt a child to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. Those agencies may also secure the full criminal record, if any, of those persons. The record, if any, shall be taken into consideration when evaluating a prospective adoptive parent, and an assessment of the effects of his or her criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court. Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the applicant shall be paid by the applicant. The department or the licensed adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

222.50. (a) In no event, nor for any period of time, shall a child who has been relinquished for adoption be removed from the county in which the child was placed by any person who has not petitioned to adopt the child without first obtaining the written consent of the department or the licensed adoption agency responsible for the child.

(b) During the pendency of an adoption proceeding, the child proposed to be adopted shall not be concealed within the county in which the adoption is pending. The child shall not be removed from that county, unless the petitioners or other interested persons first obtain permission for the removal from the court after giving advance written notice of intent to obtain the court's permission to the department or to the licensed adoption agency responsible for the child. Upon proof of the giving of the notice, permission may be

granted by the court if, within a period of 15 days from and after the date of the giving of the notice, no objections have been filed with the court by the department or the licensed adoption agency responsible for the child. If objections are filed within that period by the department or the licensed adoption agency, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to such limitations as appear to be in the best interests of the child.

This section does not apply in any of the following situations:

(1) When the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, provided that a notice of recommendation of denial of petition has not been personally served on the petitioners or the court has not issued an order prohibiting the removal of the child from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required agency consents to the adoption.

(2) When the child has been returned to and remains in the custody and control of his or her birth parent or parents.

(3) When written consent for the removal of the child is obtained from the department or the licensed adoption agency responsible for the child.

(c) A violation of this section constitutes a violation of Section 280 of the Penal Code.

(d) Neither this section nor Section 280 of the Penal Code shall be construed to render lawful any act which is unlawful under any other applicable provision of law.

222.70. (a) Any person desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides, and the clerk of the court shall immediately notify the department at Sacramento in writing of the pendency of the action and of any subsequent action taken.

(b) The caption of the petition for adoption of a child shall contain the name or names of the petitioners but shall not contain the name of the child. The petition shall contain the sex and date of birth of the child. The name that the child had prior to adoption shall appear in the joinder signed by the adoption agency.

(c) If the child is the subject of a guardianship petition, the petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The court shall be notified by petitioners of any petition for guardianship or temporary guardianship filed

subsequent to the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the adopted name of the child but shall not contain the name that the child had prior to adoption.

222.72. Whenever a petition is filed for the adoption of a child who has been placed for adoption by a licensed county adoption agency or the department, the county adoption agency or the department may, at the time of filing a favorable report in the superior court, require the persons petitioning to become adoptive parents to pay to the county agency, as agent of the state, or to the department, a fee of five hundred dollars ($500). The county adoption agency or the department may defer, waive, or reduce the fee when its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special needs child.

222.75. It shall be the duty of the department or the licensed adoption agency, whichever is a party to or joins in the petition, to submit a full report of the facts of the case to the court. The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the petition for adoption.

222.77. Whenever any report or findings are submitted to the court by the department or by a licensed adoption agency, a copy of that report or findings, whether favorable or unfavorable, shall be given to the attorney for the petitioner in the proceedings, if the petitioner has an attorney of record, or to the petitioner.

222.78. The person or persons desiring to adopt a child, and the child proposed to be adopted, shall appear before the court pursuant to Sections 221.62, 221.63, and 221.65.

222.80. Whenever, in any adoption proceeding, the petitioners move to withdraw the petition for the adoption or to dismiss the proceeding, the clerk of the court in which the proceeding is pending shall immediately notify the department at Sacramento of the action.

222.90. If the findings of the department or the licensed adoption agency are that the home of the petitioners is not suitable for the child or that the required agency consents are not available and it recommends that the petition be denied, or if the petitioners desire to withdraw the petition, and it recommends that the petition be denied, the county clerk upon receipt of the report of the department or the licensed adoption agency shall immediately refer it to the superior court for review.

Upon receipt of the reports, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the department or licensed adoption agency, the petitioners, and, if necessary, the birth parents by certified mail, return receipt

requested, to the address of each as shown in the proceeding.

The department or the licensed adoption agency shall appear to represent the child.

Article 3. Independent Adoptions

224.10. (a) The Legislature hereby finds and declares that lawyering may be deficient when conflict of interest deprives the client of undivided loyalty and effort. The Legislature further finds and declares that the relation between attorney and client is a fiduciary relation of the very highest character, and binds the attorney to the most conscientious fidelity.

The Legislature finds that Rule 2-111(A)(2) of the State Bar Rules of Professional Conduct provides that an attorney shall not withdraw from employment until he or she has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

The Legislature declares that in an independent adoption proceeding, whether or not written consent is obtained, multiple representation by an attorney should be avoided whenever a birth parent displays the slightest reason for the attorney to believe any controversy might arise. The Legislature finds and declares that it is the duty of the attorney when a conflict of interest occurs to withdraw promptly from any case, advise the parties to retain independent counsel, refrain from taking positions in opposition to any of these former clients, and thereafter maintain an impartial, fair, and open attitude toward the new attorneys.

(b) Notwithstanding any other provision of law, it is unethical for an attorney to undertake the representation of both the prospective adoptive parents and the birth parents of a child in any negotiations or proceedings in connection with an adoption unless a written consent is obtained from both parties. The written consent shall include all of the following:

(1) A notice to the birth parents, in the form specified in this section, of their right to have an independent attorney advise and represent them in the adoption proceedings and that the prospective adoptive parents may be required to pay the reasonable attorney's fees up to a maximum of five hundred dollars ($500) (unless a higher fee is agreed to by the parties) for that representation.

(2) A notice to the birth parents that they may waive their right to an independent attorney and may be represented by the attorney representing the prospective adoptive parents.

(3) A waiver by the birth parents of representation by an independent attorney.

(4) An agreement that the attorney representing the prospective adoptive parents shall represent the birth parents.

(c) Upon the petition or motion of any party, or upon motion of

the court, the court may appoint an attorney to represent the birth parent or parents of a child in negotiations or proceedings in connection with the child's adoption.

(d) The birth parent or parents of the child may have counsel, other than the counsel representing the interests of the prospective adoptive parents, to advise them fully of the adoption procedures and of their legal rights. The birth parent or parents also may retain counsel to represent them in negotiations or proceedings in connection with the child's adoption. The court may award attorneys' fees and costs for just cause and based upon the ability of the parties to pay those fees and costs.

(e) In the initial communication between the attorney retained by or representing the prospective adoptive parents and the birth parents, or as soon thereafter as reasonable, but prior to any written consent for dual representation, the attorney shall advise the birth parents of their rights regarding independent counsel and that it is possible to waive independent counsel.

(f) Any written consent to dual representation shall be filed with the court prior to the filing of the birth parent's consent to adoption.

224.20. The selection of prospective adoptive parent or parents shall be personally made by the birth parent or parents of the child and may not be delegated to an agent. The act of selection by the birth parent or parents shall be based upon his, her, or their personal knowledge of the prospective adoptive parent or parents.

224.30. (a) Any person desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides, and the clerk of the court shall immediately notify the department at Sacramento in writing of the pendency of the action and of any subsequent action taken. The petition shall contain an allegation that the petitioners will file promptly with the department or the delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition so filed shall not, however, affect the jurisdiction of the court to proceed, nor shall it have affected the jurisdiction of any court to have proceeded prior to January 1, 1991, upon the petition omitting the allegation, in any manner provided in this article or otherwise, nor shall the omission have affected or affect the validity of any decree of adoption or other order made by any court before or on or after January 1, 1991, with respect to a petition omitting the allegation.

(b) The caption of the petition for adoption of a child shall contain the name or names of the petitioners but shall not contain the name of the child. The petition shall contain the sex and date of birth of the child. The name that the child had prior to adoption shall appear in the petition.

(c) If the child is the subject of a guardianship petition, the petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The court shall be notified by the

petitioners of any petition for guardianship or temporary guardianship filed subsequent to the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the adopted name of the child but shall not contain the name that the child had prior to adoption.

224.33. (a) During the pendency of an adoption proceeding, the child proposed to be adopted shall not be concealed within the county in which the adoption is pending; and shall not be removed from that county, unless the petitioners or other interested persons first obtain permission for the removal from the court after giving advance written notice of intent to obtain the court's permission to the department or to the delegated county adoption agency responsible for the investigation of the proposed adoption. Upon proof of the giving of the notice, permission may be granted by the court if, within a period of 15 days from and after the date of the giving of the notice, no objections have been filed with the court by the department or the delegated county adoption agency. If objections are filed within that period by the department or the delegated county adoption agency, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to such limitations as appear to be in the best interests of the child.

This section does not apply in any of the following situations:

(1) When the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, provided that a notice of recommendation of denial of petition has not been personally served on the petitioners or the court has not issued an order prohibiting the removal of the child from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required consents to the adoption.

(2) When the child has been returned to and remains in the custody and control of his or her birth parent or parents.

(b) A violation of this section constitutes a violation of Section 280 of the Penal Code.

(c) Neither this section nor Section 280 of the Penal Code shall be construed to render lawful any act which is unlawful under any other applicable provision of law.

224.36. (a) Whenever the petitioners move to withdraw the petition for the adoption or to dismiss the proceeding, the clerk of

the court in which the proceeding is pending shall immediately notify the department at Sacramento of that action. The department or the delegated county adoption agency shall file a full report with the court recommending a suitable plan for the child in every case in which the petitioners move to withdraw the petition for the adoption or where the department or the delegated county adoption agency recommends that the petition for adoption be denied and shall appear before the court for the purpose of representing the child.

(b) Notwithstanding withdrawal of dismissal by the petitioners, the court may retain jurisdiction over the child for the purpose of making any order or orders for his or her custody as the court may deem to be in the best interests of the child.

(c) Whenever the birth parent has refused to give the required consent or the reason or cause for the withdrawal of the petition, or dismissal of the proceeding is the withdrawal of the consent of the birth parent or parents, the court shall order at the hearing the child restored to the care and custody of the birth parent or parents.

224.37. At the hearing, if the court sustains the recommendation of the department or delegated county adoption agency that the child be removed from the home of the petitioners, because the department or delegated county adoption agency has recommended denial or the petitioners move to withdraw the petition or the court dismisses the petition and does not return the child to his or her parents, the court shall commit the child to the care of the department or the delegated county adoption agency, whichever made the recommendation, for the department or delegated county adoption agency to arrange adoptive placement or to make a suitable plan. In those counties not served by a delegated county adoption agency, the county welfare department shall act as the agent of the department and shall provide care for the child in accordance with rules and regulations established by the department.

224.40. It shall be the duty of the department or of the delegated county adoption agency to accept the consent of the birth parents to the adoption of the child by the petitioners and to ascertain whether the child is a proper subject for adoption and whether the proposed home is suitable for the child, prior to filing its report with the court.

224.42. It shall be the duty of the department or the delegated county adoption agency to investigate the proposed independent adoption and to submit to the court a full report of the facts disclosed by its inquiry with a recommendation regarding the granting of the petition within 180 days after the filing of the petition. In those cases in which the investigation establishes that there is a serious question concerning the suitability of the petitioners or the care provided the child or the availability of the consent to adoption, the report shall be filed immediately. The court may allow such additional time for the filing of the reports as in its discretion it may see fit, after at least five days' notice to the petitioner or petitioners and opportunity for the petitioner or petitioners to be heard with respect to the request

for additional time.

224.44. The department or a delegated county adoption agency shall interview the petitioners and all persons from whom consent is required and whose addresses are known as soon as possible and, in the case of residents of California, within 45 working days, excluding legal holidays, after the filing of the adoption petition. In order to facilitate these interviews, at the same time the petition is filed, the petitioners shall file with the district office of the department or with the delegated county adoption agency responsible for the investigation of the adoption, a copy of the petition together with the names, addresses, and phone numbers of all parties to be interviewed, if known.

224.47. (a) Except as otherwise provided in this section, whenever a petition is filed in an independent adoption for the adoption of a child, the petitioner or petitioners shall pay a fee of five hundred dollars ($500) to the department or delegated county adoption agency prior to the filing of a favorable report in the superior court by the department or delegated county adoption agency. The department or delegated county adoption agency may defer, waive, or reduce the fee when in its judgment the payment would cause economic hardship to the prospective adoptive parents and would be detrimental to the welfare of the adopted child.

(b) Revenues produced by fees collected pursuant to subdivision (a) by the department shall be used, when appropriated by the Legislature, to fund only the state program for independent adoptions. Revenues produced by fees collected pursuant to subdivision (a) by the delegated county adoption agency shall be used by the county to fund the county program for independent adoptions. Revenues produced by fees collected by the department or counties pursuant to subdivision (a) shall not be used to supplant current funding for the adoptions program.

(c) The department shall determine the impact of the fee required under this section on the independent adoption of children, including staffing, the time required to complete investigations and court reports, and the number of fee waivers or reduction requests made and granted or denied. The department shall report its findings to the Legislature on or before January 1, 1992.

(d) This section applies only to independent adoption petitions filed on or after September 1, 1989.

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

224.49. The department or delegated county adoption agency shall require all persons filing a petition to adopt a child, to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The department or delegated county adoption agency may also secure the full criminal record, if any, of those persons. The

record, if any, shall be taken into consideration when evaluating a prospective adoptive parent, and an assessment of the effects of his or her criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court. Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the petitioner shall be paid by the petitioner. The department or delegated county adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to the prospective adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the prospective adoptive parents for at least one year, or if necessary for the placement of a special-needs child.

224.50. (a) Notwithstanding the time limits of Section 224.44, if the person to be interviewed has been advised as provided in subdivision (b) and if there is no serious question about the suitability of the prospective adoptive family as provided in subdivision (c), the department or a delegated county adoption agency shall interview at the department or agency office any person willing to be interviewed from whom consent is required, within 10 working days of receiving a copy of the filed adoption petition and documentation that all of the following conditions have been met:

(1) The person from whom consent is required has been advised pursuant to subdivision (b).

(2) There is no serious question about the suitability of the prospective adoptive family as provided in subdivision (c).

(3) The department or the agency has received the name, address, and phone number of the person to be interviewed and the complete report of the assessment of the prospective adoptive family.

The department or the licensed county adoption agency may take the consent of the person to the adoption at this interview or subsequently.

(b) The advice required by subdivision (a) shall be given by a representative of the department or a full-service adoption agency or noncustodial adoption agency, as defined in Section 220.10, as specified in this subdivision prior to placement of the child for adoption. The advice shall include a balanced presentation of the alternatives to adoption, the right to obtain additional counseling, the right to retain separate legal counsel, the meaning of the consent to adoption, the right to future information about the status of the adoption, the needs of the child and the prospective adoptive parents for complete information on the background of the child, the content of the assessment of the prospective adoptive family, and other information determined necessary by the department. The person giving the advice shall also collect information on the background of the child from the person being advised.

Each person advised pursuant to this subdivision shall be offered at least three separate counseling sessions, to be held on different

days, except that this requirement does not apply to birth fathers from whom consent for the adoption is not required. Each counseling session shall be no less than 50 minutes' duration. The counseling may be provided by a representative of the department or a licensed adoption agency or by persons licensed to provide psychotherapy or counseling selected by the person. The counseling costs shall be paid by the prospective adoptive parents at the request of the birth parents. If counseling is requested prior to the placement of the child for adoption, it shall be initiated prior to the placement.

Confirmation that a person has been advised and has received counseling, if desired, as required by this subdivision, shall be documented by the department or by an agency as described in Section 220.10 on a form prescribed by the department.

If the person from whom consent is required decides to relinquish the child for adoption, rather than to consent to adoption of the child by the petitioners, the agency advising the birth parent or parents shall not accept the relinquishment of the child, except when there are no other licensed adoption agencies in the county acceptable to the birth parent or parents, in which case the advising agency still shall not accept a relinquishment sooner than five days after completion of the giving of that advice.

(c) The determination that there is no serious question about the suitability of the prospective adoptive family, as required by subdivision (a), shall be based on an assessment conducted by the department or by a licensed adoption agency. The assessment shall be completed or updated within 12 months before the placement of the child for adoption. The assessment shall include consideration of those factors required by the department in a study to determine whether the prospective adoptive family and its home are suitable for a child, except those factors regarding the adjustment of the child in the home. In addition to describing fully information collected in the assessment and the conclusions of the assessment, the report of the assessment shall specify the characteristics of a child which the family would adopt, including, but not limited to, age, sex, ethnicity, race, and special needs. The prospective adoptive parents and any person being advised pursuant to subdivision (b) shall be provided with a written summary of the report of the assessment.

If the assessment results in a determination that there is a serious question as to the suitability of the prospective adoptive family, or if the assessment is discontinued prior to completion because of such a question, the department or the adoption agency shall provide a report of the complete or incomplete assessment to the department. The department shall retain this report for 10 years for use in any assessment of the suitability of the family to adopt a child.

(d) Any relationship between an attorney and a licensed private adoption agency involved in providing advice, counseling, or assessment to any party in an adoption pursuant to subdivision (b), shall be disclosed in writing to any person from whom consent is required and to the prospective adoptive parents.

(e) No licensed private adoption agency is required to provide the advice and assessment services specified in subdivisions (b) and (c). However, if such an agency elects to provide these services, it shall provide both services. There is no requirement that prospective adoptive parents and birth parents use the same adoption agency for these services. If the agency has a policy that allows it to provide services only to members of specific groups, this policy shall be disclosed to families prior to the beginning of the assessment process.

(f) The department or the licensed county adoption agency shall perform the advice and assessment services specified in subdivisions (b) and (c) at no cost only in those cases where all of the following apply:

(1) The prospective adoptive parents are seeking the assessment because of the intended placement of a specific child of an identified birth parent.

(2) The advice and assessment services can be conducted prior to the placement of the child.

(3) The department or the licensed county adoption agency can provide the services without delaying any mandated service.

(4) The fees specified in subdivision (a) of Section 224.47 would be waived because they would cause economic hardship to the prospective adoptive parents and would be detrimental to the welfare of the adopted child as determined by the department.

(g) The department shall study the effect of the processes described in subdivisions (a) and (f), inclusive, on the child and the parties to the adoption. The study shall provide and evaluate comparative data using information regarding the factors specified in this subdivision, which shall cover a period prior to, and concurrent with, the implementation of this section for adoptions conducted under this section or pursuant to other statutory provisions. These factors include the number and percentage of birth parents actually receiving counseling, the number of petitions in which a birth parent seeks the withdrawal of consent to adoption, the number of occasions in which the birth parent's consent is not taken at the initial interview under provisions of this section and the reasons, the number of adoptions commenced and completed under this section and pursuant to other statutory provisions, the number of requests for return of a child by a birth parent after placement but before consent, the amount of time spent by the state in completing the home study, and the number of negative home studies presented to the court.

The Independent Adoption Preplacement Program authorized by this section shall be deemed to be successful if there is a 10 percent reduction in the number of withdrawals of consent to adoption in cases commenced under this section, and if at least 25 percent of all nonagency adoptions are commenced pursuant to this section at the time the evaluation is completed.

The department shall report its findings to the Legislature on or before January 1, 1993.

(h) The department may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code to implement this section.

This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

224.61. On or before the time a consent to adoption is signed, the birth parent signing the consent shall be advised verbally and in writing by the department or the delegated county adoption agency, that he or she may, at any time in the future, request from the department or the delegated county adoption agency, all known information about the status of the child's adoption, except for personal, identifying information about the adoptive family. The birth parent shall be advised that this information includes, but is not limited to, all of the following: (a) whether the child has been placed for adoption, (b) the approximate date that an adoption was completed, and (c) if the adoption was not completed or was vacated, for any reason, whether adoptive placement of the child is again being considered.

224.62. (a) The consent of the birth parent or parents to the adoption by the petitioners must be signed in the presence of an agent of the department or of a delegated county adoption agency on a form prescribed by the department and filed with the clerk of the superior court, in the county of the petitioner's residence.

(b) The consent described in subdivision (a), when reciting that the person giving it is entitled to the sole custody of the child, and when duly acknowledged before that agent, shall be prima facie evidence of the right of the person making it to the sole custody of the child and that person's sole right to consent.

(c) If the birth parent of a child to be adopted is outside the State of California at the time of signing consent, his or her consent may be signed before a notary or other person authorized to perform notarial acts, and in that case the consent of the department or of a delegated county adoption agency will also be necessary.

(d) A birth parent who is a minor shall have the right to sign a consent for the adoption of his or her child and that consent shall not be subject to revocation by reason of that minority.

224.64. (a) Once given, consent of the birth parents to the adoption of the child by the person or persons to whose adoption of the child the consent was given, may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw his or her consent may file with the clerk of the superior court where the petition is pending, a petition for approval of withdrawal thereof, without the necessity of payment of any fee for the filing of the petition. The petition or motion shall be in writing, and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

(b) The clerk of the court shall set the matter for hearing, and

shall give notice thereof to the department, to the persons to whose adoption of the child the consent was given, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

(c) The department or the delegated county adoption agency shall, prior to the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and his or her fee therefor shall be paid from the county treasury on order of the court. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances, and that withdrawal of the consent will be for the best interests of the child, the court shall approve the withdrawal of the consent; otherwise the court shall withhold its approval. Consideration of the best interests of the child shall include, but not be limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent or parents, the extent of bonding or the potential to bond with the birth parent or parents, and the ability of the birth parent or parents to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceedings shall be dismissed.

(e) Any order of the court granting or withholding approval of a withdrawal of a consent to an adoption may be appealed in the same manner as an order of the juvenile court declaring any person to be a ward of the juvenile court.

224.66. In all cases of independent adoption in which the consent of the birth parent or parents is not necessary, the department or the delegated county adoption agency shall, prior to the hearing of the petition, file its consent to the adoption with the clerk of the superior court of the county in which the petition is filed. That consent shall not be given unless the child's welfare will be promoted by the adoption.

224.70. (a) A written medical report on the child's medical background, and if available, so far as ascertainable, the medical background of the child's biological parents, shall be made by the department or delegated county adoption agency as part of the study required by Section 224.40. The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life. The report shall be submitted to the prospective adoptive parents who shall acknowledge its receipt in writing.

(b) The department shall adopt regulations specifying the form and content of the report required by this section. In addition to any

other material that may be required by the department, the form shall include inquiries designed to elicit information on any illness, disease, or defect of a genetic or hereditary nature. All licensed adoption agencies shall cooperate with and assist the department in devising a plan that will effectuate the effective and discreet transmission to adoptees or prospective adoptive parents of pertinent medical information reported to the department or the delegated county adoption agency, upon the request of the person reporting the medical information.

224.73. (a) The department shall adopt a statement to be presented to the birth parents at the time the consent to adoption is signed and to prospective adoptive parents at the time of the home study which shall, in a clear and concise manner, in words calculated to assure the confidence of the birth parents in the integrity of the adoption process, communicate to the birth parent of a child who is the subject of an adoption petition all of the following facts:

(1) It is in the best interest of the child that the birth parents keep the department informed of any health problems that the parent develops that could affect the child.

(2) It is extremely important that the birth parent keep his or her address current with the department in order to permit a response to any inquiries to the department or licensed adoption agency concerning medical or social history.

(3) Section 229.40 of the Civil Code authorizes a person who has been adopted and who attains the age of 21 to petition the department to obtain the name and address of his or her birth parents. Consequently, it is of the utmost importance that the birth parent indicate whether or not he or she wishes his or her name and address to be so disclosed by checking the appropriate box provided on the form.

(4) The birth parent may change his or her decision as to whether or not he or she wishes his or her name and address disclosed, at any time, by sending a notarized letter to that effect, by certified mail, return receipt requested, to the department.

(5) The consent will be filed in the office of the county clerk of the county in which the adoption takes place. The file is not open to inspection by any persons other than the parties to the adoption proceedings, their attorneys, and the department, except upon order of the judge of the superior court.

(b) The department shall adopt a form to be signed by the birth parents at the time the consent to adoption is signed which shall provide as follows:

"Section 229 40 of the Civil Code authorizes a person who has been adopted and who attains the age of 21 to petition the State Department of Social Services or the licensed adoption agency that joined in the petition for his or her adoption to obtain the name and address of his or her birth parents. Indicate by checking one of the boxes below whether or not you wish your name and address to be

so disclosed:

☐ YES
☐ NO
☐ UNCERTAIN AT THIS TIME; WILL NOTIFY AGENCY AT LATER DATE"

224.76. Whenever the parental rights of a birth parent are terminated pursuant to Section 232 or 7017, the department or the delegated county adoption agency shall send a written notice to the birth parent, if his or her address is known, which shall contain the following statement:

"You are encouraged to keep this agency informed of your current address in order to permit a response to any inquiry concerning medical or social history made by or on behalf of the child who was the subject of the court action terminating parental rights."

224.80. If for a period of 180 days from the date of filing the petition, or upon the expiration of any extension of the period granted by the court, the department or the delegated county adoption agency fails or refuses to accept the consent of the birth parent or parents to the adoption, or if the department or delegated county adoption agency fails or refuses to file or to give its consent to an adoption in those cases where its consent is required by this article, either the birth parent or parents or the petitioner may appeal from the failure or refusal to the superior court of the county in which the petition is filed, in which event the clerk shall immediately notify the department or delegated county adoption agency of the appeal and the department or delegated county adoption agency shall, within 10 days, file a report of its findings and the reasons for its failure or refusal to consent to the adoption or to accept the consent of the birth parent or parents. After the filing of the findings, the court may, if it deems that the welfare of the child will be promoted by that adoption, allow the signing of the consent by the birth parent or parents in open court, or if the appeal be from the refusal of the department or delegated county adoption agency to consent thereto, grant the petition without the consent.

224.91. Whenever any report or findings are submitted to the court by the department or by a delegated county adoption agency, a copy of that report or findings, whether favorable or unfavorable, shall be given to the attorney for the petitioner in the proceedings, if the petitioner has an attorney of record, or to the petitioner.

224.93. If the findings of the department or the delegated county adoption agency are that the home of the petitioners is not suitable for the child or that the required consents are not available and it recommends that the petition be denied, or if the petitioners desire to withdraw the petition, and it recommends that the petition be denied, the county clerk upon receipt of the report of the department or the delegated county adoption agency shall immediately refer it to the superior court for review.

Upon receipt of the report, the court shall set a date for a hearing

of the petition and shall give reasonable notice of the hearing to the agency, the petitioners, and the birth parents by certified mail, return receipt requested, to the address of each as shown in the proceeding.

The department or the delegated county agency shall appear to represent the child.

224.95. The person or persons desiring to adopt a child, and the child proposed to be adopted, shall appear before the court pursuant to Sections 221.62. 221.63, and 221.65.

Article 4. Intercountry Adoptions

226.10. Intercountry adoption services described in this article shall be exclusively provided by private adoption agencies licensed by the department specifically to provide these services.

226.11. The department shall adopt regulations to administer the intercountry adoption program.

226.20. For those intercountry adoptions that will be finalized in the state, the licensed adoption agency shall provide all of the following services:

(a) Assessment of the suitability of the applicant's home.

(b) Placement of the foreign-born child in an approved home.

(c) Postplacement supervision.

(d) Submission to the court of a report on the intercountry adoptive placement with a recommendation regarding the granting of the petition.

(e) Services to applicants seeking to adopt related children living in foreign countries. The Legislature recognizes that these children have an impelling need for adoptive placement with their relatives.

226.21. (a) For those intercountry adoptions finalized in the state, the licensed adoption agency shall assume all responsibilities for the child including care, custody, and control as if the child had been relinquished for adoption in California from the time the child leaves his or her native country.

(b) Notwithstanding subdivision (a), if the child's native country requires and has given full guardianship to the prospective adoptive parents, the prospective adoptive parents shall assume all responsibilities for the child including care, custody, control, and financial support.

(c) If the prospective adoptive parents or licensed adoption agency fails to meet its responsibility for the care, custody, control, and financial responsibility of the child and the child becomes a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code, the state shall assume responsibility for the cost of care for the child. When the child becomes a dependent of the court and if, for any reason, is ineligible for AFDC under Section 14005.1 of the Welfare and Institutions Code and loses Medi-Cal eligibility, the child shall be deemed eligible for Medi-Cal under Section 14005.4 of the Welfare and Institutions Code and the State Director of Health

Services shall be given authority to provide payment for the medical services to the child which are necessary to meet the child's needs.

226.23. For those adoptions that will be finalized in a foreign country, the licensed adoption agency shall provide both of the following services:

(a) Assessment of the suitability of the applicant's home.

(b) Certification to the Immigration and Naturalization Service that California's adoptive requirements have been met.

226.25. Licensed adoption agencies shall work only with domestic and foreign adoption agencies with whom they have written agreements that specify the responsibilities of each. The agreements shall not violate any statute or regulation of the United States or of the State of California.

226.27. Nothing in this article shall be construed to prohibit the licensed adoption agency from entering into an agreement with the prospective adoptive parents to share or transfer financial responsibility for the child.

226.28. The costs incurred by licensed adoption agencies pursuant to programs established by this article shall be funded by fees charged by those agencies for services required by this article. The agency's fee schedule shall be approved by the department initially, and whenever it is altered.

226.30. A licensed adoption agency shall require all persons filing an application to adopt a child to be fingerprinted and shall secure from an appropriate law enforcement agency any criminal record of that person to determine whether the person has ever been convicted of a crime other than a minor traffic violation. The agency may also secure the full criminal record, if any, of those persons. The record, if any, shall be taken into consideration when evaluating a prospective adoptive parent, and an assessment of the effects of his or her criminal history on the ability of the prospective adoptive parent to provide adequate and proper care and guidance to the child shall be included in the report to the court. Any fee charged by a law enforcement agency for fingerprinting or for checking or obtaining the criminal record of the applicant shall be paid by the applicant. The adoption agency may defer, waive, or reduce the fee when its payment would cause economic hardship to the adoptive parents detrimental to the welfare of the adopted child.

226.35. (a) No agency shall place a child for adoption unless a written medical report on the child's medical background, and if available, so far as ascertainable, the medical background of the child's biological parents, has been submitted to the prospective adoptive parents and the prospective adoptive parents have acknowledged in writing the receipt of such report.

The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

(b) The department shall adopt regulations specifying the form and content of the report required by this section. In addition to any other material that may be required by the department, the form shall include inquiries designed to elicit information on any illness, disease, or defect of a genetic or hereditary nature. All licensed adoption agencies shall cooperate with and assist the department in devising a plan that will effectuate the effective and discreet transmission to adoptees or prospective adoptive parents of pertinent medical information reported to the department or the licensed adoption agency, upon the request of the person reporting the medical information.

226.40. (a) In no event, nor for any period of time, shall a child who has been placed for adoption by a licensed adoption agency be removed from the county in which the child was placed by any person who has not petitioned to adopt the child without first obtaining the written consent of the licensed adoption agency responsible for the child.

(b) During the pendency of an adoption proceeding, the child proposed to be adopted shall not be concealed within the county in which the adoption is pending; and shall not be removed from that county, unless the petitioners or other interested persons first obtain permission for the removal from the court after giving advance written notice of intent to obtain the court's permission to the licensed adoption agency responsible for the child. Upon proof of the giving of the notice, permission may be granted by the court if, within a period of 15 days from and after the date of the giving of the notice, no objections have been filed with the court by the licensed adoption agency responsible for the child. If objections are filed within that period by the licensed adoption agency, upon the request of the petitioners the court shall immediately set the matter for hearing and give to the objector, the petitioners, and the party or parties requesting permission for the removal reasonable notice of the hearing by certified mail, return receipt requested, to the address of each as shown in the records of the adoption proceeding. Upon a finding that the objections are without good cause, the court may grant the requested permission for removal of the child, subject to such limitations as appear to be in the best interests of the child.

(c) This section does not apply in any of the following situations:

(1) When the child is absent for a period of not more than 30 days from the county in which the adoption proceeding is pending, provided that a notice of recommendation of denial of petition has not been personally served on the petitioners or the court has not issued an order prohibiting the removal of the child from the county pending consideration of any of the following:

(A) The suitability of the petitioners.

(B) The care provided the child.

(C) The availability of the legally required agency consents to the adoption.

(2) When the child has been returned to and remains in the

custody and control of his or her birth parent or parents.

(3) When written consent for the removal of the child is obtained from the licensed adoption agency responsible for the child.

(d) A violation of this section constitutes a violation of Section 280 of the Penal Code.

(e) Neither this section nor Section 280 of the Penal Code shall be construed to render lawful any act which is unlawful under any other applicable provision of law.

226.50. As a condition of placement, the prospective adoptive parents shall file a petition to adopt the child under Section 226.52 within 30 days of placement.

226.52. (a) Any person desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides and the clerk of the court shall immediately notify the department at Sacramento in writing of the pendency of the action and of any subsequent action taken.

(b) The caption of the petition for adoption of a child shall contain the name or names of the petitioners but shall not contain the name of the child. The petition shall contain the sex and date of birth of the child. The name that the child had prior to adoption shall appear in the joinder signed by the licensed adoption agency.

(c) If the child is the subject of a guardianship petition, the petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The court shall be notified by petitioners of any petition for guardianship or temporary guardianship filed subsequent to the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the adopted name of the child but shall not contain the name that the child had prior to adoption.

226.55. The person or persons desiring to adopt a child, and the child proposed to be adopted, shall appear before the court pursuant to Sections 221.62, 221.63, and 221.65.

226.57. When the licensed adoption agency is a party to or joins in the petition for adoption, it shall submit a full report of the facts of the case to the court. The department may also submit a report.

226.59. Whenever any report or findings are submitted to the court by a licensed adoption agency, a copy of the report or findings, whether favorable or unfavorable, shall be given to the attorney for the petitioner in the proceedings, if the petitioner has an attorney of record, or to the petitioner.

226.60. Whenever, in any adoption proceeding, the petitioners move to withdraw the petition for the adoption or to dismiss the proceeding, the clerk of the court in which the proceeding is pending shall immediately notify the department at Sacramento of that action. The licensed adoption agency shall file a full report with the court recommending a suitable plan for the child in every such case where the petitioners desire to withdraw the petition for the

adoption or where the licensed adoption agency recommends that the petition for adoption be denied and shall appear before the court for the purpose of representing the child. Notwithstanding the withdrawal or dismissal by the petitioners, the court may retain jurisdiction over the child for the purpose of making any order or orders for its custody as the court may deem to be in the best interests of the child.

226.64. If the findings of the licensed adoption agency are that the home of the petitioners is not suitable for the child or that the required agency consents are not available and it recommends that the petition be denied, or if the petitioners desire to withdraw the petition, and it recommends that the petition be denied, the county clerk upon receipt of the report of the licensed adoption agency shall immediately refer it to the superior court for review.

Upon receipt of the reports, the court shall set a date for a hearing of the petition and shall give reasonable notice of the hearing to the agency and the petitioners by certified mail, return receipt requested, to the address of each as shown in the proceeding.

The licensed adoption agency shall appear to represent the child.

226.66. At the hearing, if the court sustains the recommendation that the child be removed from the home of petitioners because the licensed adoption agency has recommended denial or the petitioners desire to withdraw the petition or the court dismisses the petition and does not return him or her to his or her parents, the court shall commit the child to the care of the licensed adoption agency for that agency to arrange adoptive placement or to make a suitable plan.

Article 5. Stepparent Adoptions

227.10. (a) Any stepparent desiring to adopt a child of his or her spouse may for that purpose petition the superior court of the county in which the petitioner resides.

(b) The caption of the petition for adoption of a child shall contain the name or names of the petitioners but shall not contain the name of the child. The petition shall contain the sex and date of birth of the child. The name that the child had prior to adoption shall appear in the petition.

(c) If the child is the subject of a guardianship petition, the petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The court shall be notified by petitioners of any petition for guardianship or temporary guardianship filed subsequent to the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the adopted name of the child but shall not contain the name that the child had prior to adoption.

227.20. The probation officer or, at option of the board of supervisors, the county welfare department in the county in which

the action for adoption is pending shall make an investigation of each case of adoption by a stepparent. No order of adoption shall be made by the court until after the probation officer has filed his or her or the welfare department has filed its report and recommendation and it has been considered by the court.

No home study shall be required of the petitioner's home in such a case unless ordered by the court. The agency conducting the investigation or any interested person may request the court to order a home study or the court may order such a study on its own motion.

As used in this section, "home study" means a physical investigation of the premises where the child is residing.

227.30. A stepparent adopting a child of his or her spouse shall be liable for all reasonable costs incurred in connection with the investigation required by Section 227.20, up to a maximum of one hundred dollars ($100). The probation officer or county welfare department may defer, waive, or reduce the fee for costs when such a payment would cause economic hardship to the prospective adoptive parent which would be detrimental to the welfare of the adoptive child.

227.40. In a stepparent adoption, the consent of either or both parents must be signed in the presence of a county clerk, probation officer, or county welfare department staff member of any county of this state and the county clerk, probation officer, or county welfare department staff member before whom the consent is signed shall immediately file the consent with the clerk of the superior court of the county where the petition is filed and the clerk shall immediately notify the probation officer or, at the option of the board of supervisors, the county welfare department of the same county.

If the birth parent of a child to be adopted is outside the State of California at the time of signing consent, his or her consent may be signed before a notary, or other person authorized to perform notarial acts.

The consent, when reciting that the person giving it is entitled to sole custody of the child, shall, when duly acknowledged before the county clerk, probation officer, or county welfare department staff member be prima facie evidence of the right of the person making it to the sole custody of the child and that person's sole right to consent.

A birth parent who is a minor shall have the right to sign a consent for the adoption of his or her child and the consent shall not be subject to revocation by reason of the minority.

227.44. In a stepparent adoption, the form prescribed by the department for the consent of the birth parent shall contain substantially the following notice: "Notice to the parent who gives the child for adoption: If you and your child lived together at any time as parent and child, the adoption of your child by a stepparent does not affect the child's right to inherit your property or the property of other blood relatives."

227.46. (a) Once given, consent of the birth parent to the

adoption of the child by the stepparent may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw his or her consent may file with the clerk of the superior court where the petition is pending, a petition for approval of withdrawal of consent, without the necessity of payment of any fee for the filing of the petition. The petition or motion shall be in writing, and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

(b) The clerk of the court shall set the matter for hearing, and shall give notice thereof to the probation officer or county welfare department, to the persons to whose adoption of the child the consent was given, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

(c) The probation officer or county welfare department shall, prior to the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and his or her fee therefor shall be paid from the county treasury on order of the court. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances, and that withdrawal of the consent will be for the best interests of the child, the court shall approve the withdrawal of the consent; otherwise the court shall withhold its approval. Consideration of the best interests of the child shall include, but not be limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent, the extent of bonding or the potential to bond with the birth parent, and the ability of the birth parent to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceedings shall be dismissed.

(e) Any order of the court granting or withholding approval of a withdrawal of a consent to an adoption may be appealed from in the same manner as an order of the juvenile court declaring any person to be a ward of the juvenile court.

227.50. Whenever the petitioner moves to withdraw the petition for the adoption or to dismiss the proceeding, the clerk of the court in which the proceeding is pending shall immediately notify the probation officer or county welfare department of that action.

In any adoption proceeding in which the birth parent has refused to give the required consent, the petition shall be dismissed.

227.60. The person or persons desiring to adopt a child, and the child proposed to be adopted, shall appear before the court pursuant to Sections 221.62, 221.63, and 221.65.

Article 6. Vacation of Adoption

228.10. If any child heretofore or hereafter adopted pursuant to the law of this state shows evidence of a developmental disability or mental illness as a result of conditions prior to the adoption to such an extent that the child cannot be relinquished to an adoption agency on the grounds that the child is considered unadoptable, and of which conditions the adoptive parents or parent had no knowledge or notice prior to the entry of the decree or order of adoption, a petition setting forth those facts may be filed by the adoptive parents or parent with the court which granted the petition for adoption. If those facts are proved to the satisfaction of the court, it may make an order setting aside the decree or order of adoption.

The petition shall be filed within five years after the entering of the decree or order of adoption.

In every action brought under this section, it shall be the duty of the clerk of the superior court of the county wherein the action is brought to immediately notify the department at Sacramento of that action. Within 60 days after the notice the department shall file a full report with the court and shall appear before the court for the purpose of representing the adopted child.

228.13. Whenever the decree or order of adoption of any child shall have been set aside as provided in Section 228.10, the court making the order shall direct the district attorney or the county counsel or the county welfare department, to take appropriate proceedings under the Welfare and Institutions Code. The court may also make any order relative to the care, custody, or confinement of the child pending the proceedings as it sees fit.

The county in which the proceedings for adoption were had shall be and remain liable for the support of the child until he or she is able to support himself or herself.

228.15. Any action or proceeding of any kind whatsoever to vacate, set aside, or otherwise nullify a decree or order of adoption on the ground of any defect or irregularity of procedure in the adoption proceeding must be commenced within three years after entry of the decree or order. Any action or proceeding of any kind whatsoever to vacate, set aside, or otherwise nullify a decree or order of adoption on any ground other than a defect or irregularity of procedure must be commenced within five years after entry of the decree or order.

Article 7. Disclosure of Information

229.10. The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition filed in the office of the county clerk pursuant to this chapter shall not be open to inspection by any other than the parties to the action and their attorneys and the department, except upon the written authority of the judge of the

superior court. A judge of the superior court shall not authorize anyone to inspect the petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, or power of attorney or deposition or any portion of any such documents except in exceptional circumstances and for good cause approaching the necessitous. The petitioner may be required to pay the expenses for preparing the copies of the documents to be inspected.

Upon written request of any party to the action and upon the order of any judge of the superior court, the county clerk shall not provide any documents referred to in this section for inspection or copying to any other person, unless the name of the birth parents of the child or any information tending to identify the birth parents of the child is deleted from the documents or copies thereof.

Upon the request of the adoptive parents or the child, a county clerk may issue a certificate of adoption which states the date and place of adoption, the birth date of the child, the name of the adoptive parents, and the name which the child has taken. Unless the child has been adopted by a stepparent, the certificate shall not state the name of the birth parents of the child.

229.20. Notwithstanding any other provision of law, the department and any licensed adoption agency may furnish information relating to any adoption petition to the juvenile court, to any county welfare department, to any public welfare agency, or to any private welfare agency licensed by the department whenever it is believed the welfare of a child will be promoted thereby.

229.30. Notwithstanding any other provision of law, the department or the licensed adoption agency which made the report required by Section 222.26, 224.70, or 226.35 shall, upon the request of a person who has been adopted pursuant to this chapter and who has attained the age of 18 or who presents a certified copy of his or her marriage certificate, or upon the request of the adoptive parent of a person under the age of 18 who has been adopted pursuant to this chapter, provide that person with a copy of the medical report required by Section 222.26, 224.70, or 226.35 in the manner that the department shall prescribe by regulation. A person who is denied access to a medical report pursuant to the regulations adopted pursuant to this section may petition the superior court for review of the reasonableness of the department's or licensed adoption agency's decision. The names and addresses of any persons contained in the report shall be removed therefrom unless the person requesting the report has previously received the information pursuant to subdivision (a) of Section 229.40.

229.40. (a) The department or a licensed adoption agency shall, (1) upon request of a person who has been adopted pursuant to this chapter and who has attained the age of 21, disclose the identity of the birth parent or parents of the person and the most current address of the birth parent or parents as shown in the records of the department or licensed adoption agency, if the birth parent or

parents have indicated consent to the disclosure in writing; and (2) upon request of the birth parent of a person who has been adopted pursuant to this chapter and who has attained the age of 21, disclose the adopted name of the adoptee and his or her most current address as shown in the records of the department or licensed adoption agency if the adult adoptee has indicated in writing, pursuant to the registration program developed by the department, that he or she wishes his or her name and address to be disclosed. The department or licensed adoption agency also shall disclose the identity of a birth parent and his or her most current address as shown in the records of the department or licensed adoption agency upon the request of the adoptive parent of a person under the age of 21 who has been adopted pursuant to this chapter, upon the finding by the department or licensed adoption agency that a medical necessity or other extraordinary circumstances justify the disclosure.

The form of the request required by this section shall be prescribed by the department, shall provide for an affidavit to be executed by the requester that to the best of his or her knowledge he or she is an adoptee; that he or she is the birth parent of an adoptee; or that he or she is the adoptive parent of an adoptee. The department may adopt regulations requiring any additional means of identification from a requester as it deems necessary. The request shall advise an adoptee that if he or she so consents, his or her adoptive parents will be notified of the filing of the request prior to the release of the name and address of his or her birth parent.

This subdivision shall not be applicable if a birth parent or an adoptee has indicated that he or she does not wish his or her name or address to be disclosed.

The department shall either respond to a request for information pursuant to this section or forward the request to a licensed adoption agency pursuant to subdivision (b) within 20 working days of its receipt of the request.

The provisions of this subdivision shall apply only to those adoptions in which the relinquishment for or consent to adoption was signed on or after January 1, 1984.

(b) The department may forward requests for information pursuant to this section to any licensed adoption agency that was a party to the adoption.

(c) Notwithstanding any other provision of law, the department shall announce the availability of the present method of arranging contact among an adult adoptee, his or her birth parent, and any living adoptive parent authorized by Section 229.50 utilizing a means of communication appropriate to effectively inform the public.

(d) The department or licensed adoption agency may charge a reasonable fee, in an amount established by the department by regulation to cover the costs of processing requests for information generated pursuant to subdivision (a). The revenue resulting from the fees so charged shall be utilized by the department or licensed adoption agency to increase existing staff as needed to process these

requests. Fees received by the department shall be deposited in the Adoption Information Fund. This revenue shall be in addition to any other funds appropriated in support of the state adoption program.

The department or licensed adoption agency shall waive the fees authorized by this section for any person who is receiving public assistance pursuant to Part 3 (commencing with Section 11000) of Division 9 of the Welfare and Institutions Code.

229.50. Notwithstanding any other provision of law, if an adult adoptee, his or her birth parent, and any living adoptive parent have each filed a written waiver of his or her rights with respect to the confidentiality of adoption records with the department at Sacramento or any licensed adoption agency, the department or the licensed agency may arrange for contact among those persons. Neither the department nor a licensed adoption agency shall solicit, directly or indirectly, the execution of such a waiver.

The waiver authorized by this section shall be in the form that shall be prescribed by the department.

229.60. (a) Notwithstanding any other provision of law, if an adoptee who has attained the age of 21 has filed his or her current address, a written request for contact with any biological sibling whose existence is known to him or her, and a written waiver of his or her rights with respect to the disclosure of his or her name and address to the sibling, with the department or the adoption agency that joined in the petition for his or her adoption, and any such biological sibling of that person who has attained the age of 21 also has filed his or her current address, made such a request for contact, and filed a written waiver, if applicable, the department or the agency shall release to each of them the other's name and address. Upon inquiry, and upon proof that a person is the sibling of an adoptee who has filed a waiver pursuant to this section, the department or agency may advise him or her that such a waiver has been filed by the adoptee. The department or an agency may charge a reasonable fee, not to exceed fifty dollars ($50), for providing the service required by this section.

(b) An adoptee may revoke a waiver executed pursuant to this section by giving written notice to that effect to the department or agency.

(c) The department shall adopt a form for the request authorized by this section, which shall provide for an affidavit to be executed by persons seeking to employ the procedure authorized by this section that to the best of his or her knowledge he or she is an adoptee or a sibling of an adoptee; the form also shall contain a notice of an adoptee's rights pursuant to subdivision (b) and a statement that information will be disclosed only if there is a currently valid waiver on file with the department or agency. The department may adopt regulations requiring any additional means of identification from a person making a request pursuant to this section as it deems necessary, and for the obtaining of the consent of the natural parents of the adoptee and the sibling in order to make the disclosure

authorized by this section in any case in which the sibling remained in the custody and control of the natural parents until he or she attained the age of 18 years.

(d) The department shall not solicit the execution of a waiver authorized by this section; however, the department shall announce the availability of the procedure authorized by this section, utilizing a means of communication appropriate to effectively inform the public.

229.70. (a) Notwithstanding any other provision of law, the department and any licensed adoption agency shall release any letters, photographs, or other items of personal property in their possession to any adoptee, birth parent, or adoptive parent, upon written request. The material may be requested by any of the following parties:

(1) The adoptee, provided that he or she has attained the age of 18 years.

(2) The adoptive parent or parents, on behalf of an adoptee under the age of 18 years, as long as instructions to the contrary have not been made by the depositor.

(3) The birth parent or parents.

Notwithstanding any other provision of law, all identifying names and addresses shall be deleted from the letters, photographs, or items of personal property before delivery to the requester.

(b) Any letters, photographs, or other items of personal property deposited on or after January 1, 1985, shall be accompanied by a release form or similar document signed by the person depositing the material, specifying to whom the material may be released. At its discretion, the department or licensed adoption agency shall have the right to refuse for deposit items of personal property that, because of value or bulk, would pose storage problems.

(c) Notwithstanding subdivision (a), only the following photographs deposited before January 1, 1985, shall be released:

(1) Photographs of the adoptee which have been requested by the adoptee.

(2) Photographs which have been deposited by the adoptee, the adoptive parent or parents, or the birth parent or parents, and for which there is a letter or other document on file indicating that person's consent to the release of the photographs.

(d) The department and licensed adoption agencies may charge a fee to cover the actual costs of any services required by this section in excess of normal postadoptive services provided by the department or agency. The department shall develop a fee schedule that shall be implemented by the department and licensed adoption agencies in assessing charges to the person who deposits the material or the person to whom the material is released. The fee may be waived by the department or licensed adoption agencies in cases in which it is established that a financial hardship exists.

(e) As used in this section, "photograph" means a photograph of the person depositing the photograph or the person making the

request for the release.

SEC. 4. Chapter 3 (commencing with Section 230.10) is added to Title 2 of Part 3 of Division 1 of the Civil Code, to read:

CHAPTER 3. ADOPTION OF ADULTS AND MARRIED MINORS

Article 1. General Provisions

230.10. Any adult person or married minor child may be adopted by any other adult person in the cases and subject to the rules prescribed in this chapter.

230.12. No person shall adopt more than one unrelated adult person within one year of his or her adoption of an unrelated adult unless the person to be adopted is the sibling by birth of a person previously adopted pursuant to this section, or unless the person to be adopted is disabled or physically handicapped. No person shall adopt an unrelated adult person within one year of any adoption of an unrelated adult by his or her spouse, unless the person to be adopted is the sibling by birth of a person previously adopted pursuant to this section.

230.14. A person adopted pursuant to this chapter may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.

230.16. The parents of a person adopted pursuant to this chapter are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the person so adopted, and have no right over that person.

Article 2. Procedures

230.20. (a) Any adult person may adopt any other adult person younger than himself or herself, except the spouse of the adopting person, by an agreement of adoption approved by a decree of adoption of the superior court of the county in which either the person adopting or the person adopted resides, as provided in this section. The agreement of adoption shall be in writing and shall be executed by the person adopting the person to be adopted, and shall set forth that the parties agree to assume toward each other the legal relation of parent and child, and to have all of the rights and be subject to all of the duties and responsibilities of that relation.

A married person not lawfully separated from his or her spouse cannot adopt an adult person without the consent of the spouse of the adopting person, if the spouse, not consenting, is capable of giving the consent. A married person not lawfully separated from his or her spouse cannot be adopted without the consent of the spouse of the person to be adopted if the spouse, not consenting, is capable of giving that consent. Neither the consent of the birth parent or parents of the person to be adopted, nor of the department, nor of

any other person shall be required.

(b) The adopting person and the person to be adopted may file in the superior court of the county in which either resides a petition praying for approval of the agreement of adoption by the issuance of an order of adoption. The court shall fix a time and place for hearing on the petition, and both the person adopting and the person to be adopted shall appear at the hearing in person, unless an appearance is impossible, in which event an appearance may be made for either or both of the persons by counsel, empowered in writing to make the appearance. The court may require notice of the time and place of the hearing to be served on any other interested persons, and any interested person may appear and object to the proposed adoption. No investigation or report to the court by any public officer or agency is required, but the court may require the county probation officer or the department to investigate the circumstances of the proposed adoption and report thereon, with recommendations, to the court prior to the hearing.

(c) At the hearing the court shall examine the parties, or the counsel of any party not present in person. If the court is satisfied that the adoption will be for the best interests of the parties and in the public interest, and that there is no reason why the petition should not be granted, the court shall approve the agreement of adoption, and make an order of adoption declaring that the person adopted is the child of the person adopting him or her; otherwise, the court shall withhold approval of the agreement and deny the petition.

A married minor child may be adopted pursuant to this section if he or she has the written consent of his or her spouse to the adoption.

In determining whether or not the adoption of any person pursuant to this subdivision is in the public interest or the best interests of the persons seeking the adoption, the court may consider evidence, oral or written, whether or not it is in conformity with the Evidence Code.

(d) A hearing with regard to the adoption of a person or the termination of a parent and child relationship established pursuant to this section may, in the discretion of the court, be open and public.

(e) The person seeking to adopt shall mail or personally serve notice of the hearing and a copy of the petition to the director of the regional center for the developmentally disabled, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, and to any living birth parents or adult children of the proposed adoptee, at least 30 days before the day of the hearing on a petition for adoption in any case in which both of the following conditions exist:

(1) The proposed adoptee is an adult with developmental disabilities.

(2) The person seeking to adopt is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or is a spouse or employee of a provider.

(f) (1) The petition for adoption shall state the length and nature

of the relationship between the person seeking to adopt and the proposed adoptee; the degree of kinship, if any; the reason the adoption is sought, together with a statement as to why the adoption would be in the best interests of the person seeking to adopt, the proposed adoptee, and the public; the names and addresses of any living birth parents or adult children of the proposed adoptee; and whether the person seeking to adopt or his or her spouse has previously adopted any other adult person and, if so, the names of any such person, together with the date and place of the adoption.

(2) If the person seeking to adopt is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities, or is a spouse or employee of a provider, and seeks to adopt an unrelated adult with developmental disabilities, the regional center for the developmentally disabled notified pursuant to subdivision (e) shall file a written report with the court regarding the suitability of the proposed adoption in meeting the needs of the proposed adoptee, and regarding any known previous adoption by the petitioner.

(g) Any person who has been adopted under this section may, upon written notice to the adoptive parent, file a petition to terminate the relationship of parent and child. The petition shall indicate the name and address of the petitioner, the name and address of the adoptive parent, the date and place of the adoption, and the circumstances upon which the petition is based. If the adoptive parent consents in writing to the termination, an order terminating the relationship of parent and child may be issued by the court without further notice.

If the adoptive parent does not consent to the termination, a verified, written response shall be filed within 30 days of the date of mailing of the notice, and the matter shall be set for hearing. The court may require an investigation by the county probation officer or the department.

SEC. 5. Section 232 of the Civil Code is amended to read:

232. (a) An action may be brought for the purpose of having any child under the age of 18 years declared free from the custody and control of either or both of his or her parents when the child comes within any of the following descriptions:

(1) The child has been left without provision for the child's identification by his or her parent or parents or by others or has been left by both of his or her parents or his or her sole parent in the care and custody of another for a period of six months or by one parent in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child. The failure to provide identification, failure to provide support, or failure to communicate shall be presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the

child abandoned by the parent or parents. In those cases in which the child has been left without provision for the child's identification and the whereabouts of the parents are unknown, a petition may be filed after the 120th day following the discovery of the child and citation by publication may be commenced. The petition may not be heard until after the 180th day following the discovery of the child.

(2) Who has been neglected or cruelly treated by either or both parents, if the child has been a dependent child of the juvenile court under any subdivision of Section 300 of the Welfare and Institutions Code and the parent or parents have been deprived of the child's custody for one year prior to the filing of a petition pursuant to this section. Physical custody by the parent or parents for insubstantial periods of time shall not serve to interrupt the running of the one-year period.

(3) Whose parent or parents suffer a disability because of the habitual use of alcohol, or any of the controlled substances specified in Schedules I to V, inclusive, of Division 10 (commencing with Section 11000) of the Health and Safety Code, except when these controlled substances are used as part of a medically prescribed plan, or are morally depraved, if the child has been a dependent child of the juvenile court, and the parent or parents have been deprived of the child's custody continuously for one year immediately prior to the filing of a petition pursuant to this section. As used in this subdivision, "disability" means any physical or mental incapacity which renders the parent or parents unable to adequately care for and control the child. Physical custody by the parent or parents for insubstantial periods of time shall not interrupt the running of the one-year period.

(4) Whose parent or parents are convicted of a felony, if the facts of the crime of which the parent or parents were convicted are of a nature so as to prove the unfitness of the parent or parents to have the future custody and control of the child.

(5) Whose parent or parents have been declared by a court of competent jurisdiction, wherever situated, to be developmentally disabled or mentally ill, if, in the state or country in which the parent or parents reside or are hospitalized, the Director of Mental Health or the Director of Developmental Services, or their equivalent, if any, and the superintendent of the hospital of which, if any, the parent or parents are inmates or patients, certify that the parent or parents so declared to be developmentally disabled or mentally ill will not be capable of supporting or controlling the child in a proper manner.

(6) Whose parent or parents are mentally disabled and are likely to remain so in the foreseeable future. As used in this subdivision, "mentally disabled" means that a parent or parents suffer any mental incapacity or disorder which renders the parent or parents unable to adequately care for and control the child. The evidence of any two experts, each of whom shall be either a physician and surgeon, certified either by the American Board of Psychiatry and Neurology

or under Section 6750 of the Welfare and Institutions Code, or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, shall be required to support a finding under this subdivision. If, however, the parent or parents reside in another state or in a foreign country, the evidence required by this subdivision may be supplied by the affidavits of two experts, each of whom shall be either a physician and surgeon who is a resident of that state or foreign country, and who has been certified by a medical organization or society of that state or foreign country to practice psychiatric or neurological medicine, or by a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders and who is licensed in that state or authorized to practice in that country. If the rights of any parent are sought to be terminated pursuant to this subdivision, and the parent has no attorney, the court shall appoint an attorney for the parent pursuant to Section 237.5, whether or not a request for the appointment is made by the parent.

(7) Who has been in out-of-home placement under the supervision of the juvenile court, the county welfare department, or other public or private licensed child-placing agency for a one-year period, if the court finds that return of the child to the child's parent or parents would be detrimental to the child and that the parent or parents have failed during that period, and are likely to fail in the future, to maintain an adequate parental relationship with the child, which includes providing both a home and care and control for the child.

If the minor has been adjudged a dependent child of the juvenile court and placed in out-of-home placement pursuant to Section 361 of the Welfare and Institutions Code, the one-year period shall be calculated from the date of the dispositional hearing at which the child was placed in out-of-home placement pursuant to that section. If the minor is in placement under the supervision of a county welfare department or other public or private licensed child-placing agency, pursuant to a voluntary placement, as described in Section 16507.4 of the Welfare and Institutions Code, the one-year period shall be calculated from the date the minor entered out-of-home placement.

The court shall make a determination that reasonable services have been provided or offered to the parents which were designed to aid the parents to overcome the problems which led to the deprivation or continued loss of custody and that despite the availability of these services, return of the child to the parents would be detrimental to the child. The probation officer or social worker currently assigned to the case of the child shall appear at the termination proceedings.

If the minor has been adjudged to be a dependent child of the court pursuant to Section 300 of the Welfare and Institutions Code,

the court shall review and consider the contents of the juvenile court file in determining if the services offered were reasonable under the circumstances.

Trial placement of the child in the physical custody of the parent or visitation of the child with the parent during the one-year period, when the trial placement or visitation does not result in permanent placement of the child with the parent, shall not serve to interrupt the running of the one-year period.

(8) A minor who has been found to be a dependent child of the juvenile court and the juvenile court has determined, pursuant to paragraph (3), (4), or (5) of subdivision (b) of Section 361.5 of the Welfare and Institutions Code, that reunification services shall not be provided to the minor's parent or guardian.

(b) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(c) A finding pursuant to this section shall be supported by clear and convincing evidence.

(d) Sections 4600 and 5158 shall not apply to proceedings pursuant to this section.

(e) This section does not apply to minors adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 of the Welfare and Institutions Code on and after January 1, 1989, during the period in which the minor is a dependent child of the court. For those minors, Section 366.26 of the Welfare and Institutions Code and Sections 221.20, 222.10, and 7017 of this code provide the exclusive means for the termination of parental rights.

SEC. 5.5. Section 232 of the Civil Code is amended to read:

232. (a) An action may be brought for the purpose of having any child under the age of 18 years declared free from the custody and control of either or both of his or her parents when the child comes within any of the following descriptions:

(1) The child has been left without provision for the child's identification by his or her parent or parents or by others or has been

left by both of his or her parents or his or her sole parent in the care and custody of another for a period of six months or by one parent in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child. The failure to provide identification, failure to provide support, or failure to communicate shall be presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents. In those cases in which the child has been left without provision for the child's identification and the whereabouts of the parents are unknown, a petition may be filed after the 120th day following the discovery of the child and citation by publication may be commenced. The petition may not be heard until after the 180th day following the discovery of the child.

(2) Who has been neglected or cruelly treated by either or both parents, if the child has been a dependent child of the juvenile court under any subdivision of Section 300 of the Welfare and Institutions Code and the parent or parents have been deprived of the child's custody for one year prior to the filing of a petition pursuant to this section. Physical custody by the parent or parents for insubstantial periods of time shall not serve to interrupt the running of the one-year period.

(3) Whose parent or parents suffer a disability because of the habitual use of alcohol, or any of the controlled substances specified in Schedules I to V, inclusive, of Division 10 (commencing with Section 11000) of the Health and Safety Code, except when these controlled substances are used as part of a medically prescribed plan, or are morally depraved, if the child has been a dependent child of the juvenile court, and the parent or parents have been deprived of the child's custody continuously for one year immediately prior to the filing of a petition pursuant to this section. As used in this subdivision, "disability" means any physical or mental incapacity which renders the parent or parents unable to adequately care for and control the child. Physical custody by the parent or parents for insubstantial periods of time shall not interrupt the running of the one-year period.

(4) Whose parent or parents are convicted of a felony, if the facts of the crime of which the parent or parents were convicted are of a nature so as to prove the unfitness of the parent or parents to have the future custody and control of the child.

(5) Whose parent or parents have been declared by a court of competent jurisdiction, wherever situated, to be developmentally disabled or mentally ill, if, in the state or country in which the parent or parents reside or are hospitalized, the Director of Mental Health or the Director of Developmental Services, or their equivalent, if any, and the superintendent of the hospital of which, if any, the parent or parents are inmates or patients, certify that the parent or

parents so declared to be developmentally disabled or mentally ill will not be capable of supporting or controlling the child in a proper manner.

(6) Whose parent or parents are mentally disabled and are likely to remain so in the foreseeable future. As used in this subdivision, "mentally disabled" means that a parent or parents suffer any mental incapacity or disorder which renders the parent or parents unable to adequately care for and control the child. The evidence of any two experts, who shall be selected by the court, one of whom shall be a physician and surgeon, certified either by the American Board of Psychiatry and Neurology or under Section 6750 of the Welfare and Institutions Code, or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, and the other of whom shall be either a physician and surgeon, certified either by the American Board of Psychiatry and Neurology or under Section 6750 of the Welfare and Institutions Code, a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, a licensed marriage, family, and child counselor who has at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, or a licensed clinical social worker who has at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, shall be required to support a finding under this subdivision. If, however, the parent or parents reside in another state or in a foreign country, the evidence required by this subdivision may be supplied by the affidavits of two experts, each of whom shall be either a physician and surgeon who is a resident of that state or foreign country, and who has been certified by a medical organization or society of that state or foreign country to practice psychiatric or neurological medicine, or by a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders and who is licensed in that state or authorized to practice in that country. If the rights of any parent are sought to be terminated pursuant to this subdivision, and the parent has no attorney, the court shall appoint an attorney for the parent pursuant to Section 237.5, whether or not a request for the appointment is made by the parent.

(7) Who has been in out-of-home placement under the supervision of the juvenile court, the county welfare department, or other public or private licensed child-placing agency for a one-year period, if the court finds that return of the child to the child's parent or parents would be detrimental to the child and that the parent or parents have failed during that period, and are likely to fail in the future, to maintain an adequate parental relationship with the child, which includes providing both a home and care and control for the child.

If the minor has been adjudged a dependent child of the juvenile court and placed in out-of-home placement pursuant to Section 361 of the Welfare and Institutions Code, the one-year period shall be calculated from the date of the dispositional hearing at which the child was placed in out-of-home placement pursuant to that section. If the minor is in placement under the supervision of a county welfare department or other public or private licensed child-placing agency, pursuant to a voluntary placement, as described in Section 16507.4 of the Welfare and Institutions Code, the one-year period shall be calculated from the date the minor entered out-of-home placement.

The court shall make a determination that reasonable services have been provided or offered to the parents which were designed to aid the parents to overcome the problems which led to the deprivation or continued loss of custody and that despite the availability of these services, return of the child to the parents would be detrimental to the child. The probation officer or social worker currently assigned to the case of the child shall appear at the termination proceedings.

If the minor has been adjudged to be a dependent child of the court pursuant to Section 300 of the Welfare and Institutions Code, the court shall review and consider the contents of the juvenile court file in determining if the services offered were reasonable under the circumstances.

Trial placement of the child in the physical custody of the parent or visitation of the child with the parent during the one-year period, when the trial placement or visitation does not result in permanent placement of the child with the parent, shall not serve to interrupt the running of the one-year period.

(8) A minor who has been found to be a dependent child of the juvenile court and the juvenile court has determined, pursuant to paragraph (3), (4), or (5) of subdivision (b) of Section 361.5 of the Welfare and Institutions Code, that reunification services shall not be provided to the minor's parent or guardian.

(b) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(c) A finding pursuant to this section shall be supported by clear and convincing evidence.

(d) Sections 4600 and 5158 shall not apply to proceedings pursuant to this section.

(e) This section does not apply to minors adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 of the Welfare and Institutions Code on and after January 1, 1989, during the period in which the minor is a dependent child of the court. For those minors, Section 366.26 of the Welfare and Institutions Code and Sections 224, 224m, 221.20, 222.10, and 7017 of this code provide the exclusive means for the termination of parental rights.

SEC. 6. Section 235 of the Civil Code is amended to read:

235. (a) The father or mother of the minor person, if his or her place of residence is known to the petitioner, or, if the place of residence of his or her father or mother is not known to the petitioner, then the grandparents and adult brothers, sisters, uncles, aunts, and first cousins of the minor person, if there are any and if their residences and relationships to that person are known to the petitioner, shall be notified of the proceedings by service of a citation advising the person or persons that they may appear at the time and place stated in the citation. The notice shall also advise the person or persons of the rights and procedures set forth in Section 237.5. The citation shall be served in the manner provided by law for the service of a summons in a civil action, other than by publication. If the petition is filed for the purpose of freeing the child for placement for adoption, the citation shall so state. In all cases where one parent has relinquished his or her child for the purpose of adoption, or has signed a consent for adoption as provided in Section 222.10, 224.62, or 227.40, no notice as herein provided need be given to the parent who has signed that relinquishment or consent. Service of such citations shall be made at least 10 days before the time stated therein for such appearance.

(b) If the father or mother of the minor person or any person alleged to be or claiming to be the father or mother cannot, with reasonable diligence, be served as provided for in subdivision (a), or if his or her place of residence is not known to the petitioner, the petitioner or his agent or attorney shall make and file an affidavit, and shall state therein the name of the father or mother or alleged father or mother and his or her place of residence, if known to the petitioner, and the name of the father or mother or alleged father or mother whose place of residence is unknown to the petitioner. Thereupon the court shall make an order that the service be made by the publication of a citation requiring the father or mother or alleged father or mother to appear at the time and place stated therein, and that the citation be published in a newspaper to be

named and designated as most likely to give notice to the father or mother or alleged father or mother to be served once a week for four successive weeks. In case of publication where the residence of a parent or alleged parent is known, the court shall also direct a copy of the citation to be forthwith served upon that parent or alleged parent by mail by deposit in the post office properly addressed and with the postage thereon fully prepaid, directed to that parent or alleged parent at his or her place of residence. When publication is ordered, service of a copy of the citation in the manner provided for in subdivision (a) is equivalent to publication and deposit in the post office. Service is complete at the expiration of the time prescribed by the order for publication or when service is made as provided for in subdivision (a), whichever event shall first occur.

If one or both of the parents of the minor person be unknown or if the name of either or both of his or her parents be uncertain, then that fact shall be set forth in the affidavit and the court shall order the citation to be directed to either the father or the mother, or both, of the minor person, naming and otherwise describing the minor person, and to all persons claiming to be the father or mother of the minor person.

SEC. 7. Section 274 of the Civil Code is amended to read:

274. Approval of an interstate placement of a child for adoption shall not be granted by the compact administrator if the placement is in violation of either Section 224.20 of this code or Section 273 of the Penal Code.

SEC. 8. Section 7013 of the Civil Code is amended to read:

7013. The court has continuing jurisdiction to modify a judgment or order made under this part. A judgment or order relating to an adoption may only be modified in the same manner and under the same conditions as a decree of adoption may be modified under Section 228.10 or 228.15.

SEC. 9. Section 7017 of the Civil Code is amended to read:

7017. (a) (1) If a mother relinquishes for or consents to or proposes to relinquish for or consent to the adoption of a child who has (A) a presumed father under subdivision (a) of Section 7004 or (B) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under Chapter 2 (commencing with Section 220.10) of Title 2 of Part 3 of Division 1 of the Civil Code, unless the father's relationship to the child has been previously terminated or determined by a court not to exist or the father has voluntarily relinquished or consented to the adoption of the child.

(2) If a father relinquishes or consents to or proposes to relinquish a child for adoption, the mother shall be given notice of the adoption proceeding and have the rights provided under Chapter 2 (commencing with Section 220.10) of Title 2 of Part 3 of Division 1 of the Civil Code, unless the mother's relationship to the child has been previously terminated by a court or the mother has voluntarily

relinquished or consented to the adoption of the child.

(b) If a mother relinquishes for, consents to, or proposes to relinquish for or consent to the adoption of a child who does not have (1) a presumed father under subdivision (a) of Section 7004 or (2) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding and the alleged father, if any, has not, in writing, denied paternity, waived his right to notice, voluntarily relinquished or consented to the adoption, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the superior court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court, or unless the father has been served as prescribed in subdivision (f) with a written notice alleging that he is or could be the natural father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7006 within 30 days of service of the notice or the birth of the child, whichever is later.

(c) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person by the State Department of Social Services, a licensed county adoption agency, or the licensed adoption agency to which the child is to be relinquished, or in the case of a stepparent adoption, at the option of the board of supervisors, a licensed county adoption agency, the county department designated by the board of supervisors to administer the public social services program, or the county probation department. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child. The department or the licensed adoption agency shall report the findings to the court.

(d) (1) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subdivision (f), unless he has been served with a written notice alleging that he is or could be the natural father of the child to be adopted, or placed or relinquished for adoption and has failed to bring an action pursuant to subdivision (c) of Section 7006 to declare the existence of the father and child relationship within 30 days of serving the notice or the birth of the child, whichever is later. If any of them fails to appear or, if appearing, fails to claim

parental rights, his parental rights with reference to the child shall be terminated.

(2) If the natural father or a man representing himself to be the natural father claims parental rights, the court shall determine if he is the father. The court shall then determine if it is in the best interest of the child that the father retain his parental rights, or that an adoption of the child be allowed to proceed. The court, in making that determination, may consider all relevant evidence, including the efforts made by the father to obtain custody, the age and prior placement of the child, and the effects of a change of placement on the child. If the court finds that it is in the best interest of the child that the father should be allowed to retain his parental rights, it shall order that his consent is necessary for an adoption. If the court finds that the man claiming parental rights is not the father, or that if he is the father it is in the child's best interest that an adoption be allowed to proceed, it shall order that that person's consent is not required for an adoption; such a finding terminates all parental rights and responsibilities with respect to the child. Section 4600 does not apply to this proceeding. Nothing in this section changes the rights of a presumed father.

(e) If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child.

(f) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in accordance with the provisions of the Code of Civil Procedure for the service of process in a civil action in this state, provided that publication or posting of the notice of the proceeding shall not be required. Proof of giving the notice shall be filed with the court before the petition is heard. However, if a person identified as the natural father or possible natural father cannot be located or his whereabouts are unknown or cannot be ascertained, the court may issue an order dispensing with notice to that person.

(g) Any order requiring or dispensing with a father's consent for the adoption of a child may be appealed from in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

SEC. 10. Section 124 of the Code of Civil Procedure is amended to read:

124. Except as provided in Sections 221.60 and 4306 of the Civil Code or any other provision of law, the sittings of every court shall be public.

SEC. 11. Section 10125.5 of the Health and Safety Code is amended to read:

10125.5. (a) The second section of the certificate of live birth as specified in subdivision (b) of Section 10125 shall be confidential. Access to such portion of any certificate of live birth shall be limited

to the following:

(1) State Department of Health Services staff.

(2) Local registrar's staff and local health department staff when approved by the local registrar or local health officer, respectively.

(3) Persons with a valid scientific interest as determined by the State Registrar, who are engaged in demographic, epidemiological or other similar studies related to health, and who agree to maintain confidentiality as prescribed by this division and by regulation of the State Registrar.

(4) The mother or father identified in the certificate.

(5) The person named on the certificate.

(6) Any person who has petitioned to adopt the person named on the certificate, subject to the provisions of Section 10439 of the Health and Safety Code and Sections 229.10 and 229.40 of the Civil Code.

(b) The State Department of Health Services shall maintain an accurate record of all persons who are given access to the confidential portion of the certificate. That record shall include: the name of the person authorizing access; name, title, and organizational affiliation of persons given access; dates of access; and specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the State Department of Health Services.

(c) All research proposed to be conducted using the confidential medical and social information on the birth certificate shall first be reviewed by the appropriate committee constituted for the protection of human subjects which is approved by the federal Department of Health, Education, and Welfare and has a general assurance pursuant to Part 46 of Title 45 of the Code of Federal Regulations. No information shall be released until the request for information has been reviewed by the Vital Statistics Advisory Committee and that committee has recommended to the State Registrar that the information shall be released.

SEC. 11.5. Section 10125.5 of the Health and Safety Code is amended to read:

10125.5. (a) The second section of the certificate of live birth as specified in subdivision (b) of Section 10125 shall be confidential. Access to such portion of any certificate of live birth shall be limited to the following:

(1) State Department of Health Services staff.

(2) Local registrar's staff and local health department staff when approved by the local registrar or local health officer, respectively.

(3) Persons with a valid scientific interest as determined by the State Registrar, who are engaged in demographic, epidemiological or other similar studies related to health, and who agree to maintain confidentiality as prescribed by this division and by regulation of the State Registrar.

(4) The parent who signed the certificate or, if no parent signed the certificate, the mother.

(5) The person named on the certificate.

(6) Any person who has petitioned to adopt the person named on the certificate, subject to the provisions of Section 10439 of the Health and Safety Code and Sections 229.10 and 229.40 of the Civil Code.

(b) The State Department of Health Services shall maintain an accurate record of all persons who are given access to the confidential portion of the certificate. The record shall include: the name of the person authorizing access; name, title, and organizational affiliation of persons given access; dates of access; and specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the State Department of Health Services.

(c) All research proposed to be conducted using the confidential medical and social information on the birth certificate shall first be reviewed by the appropriate committee constituted for the protection of human subjects which is approved by the federal Department of Health and Human Services and has a general assurance pursuant to Part 46 of Title 45 of the Code of Federal Regulations. No information shall be released until the request for information has been reviewed by the Vital Statistics Advisory Committee and such committee has recommended to the State Registrar that the information shall be released.

SEC. 12. Section 10433.2 of the Health and Safety Code is amended to read:

10433.2. If both adopting parents were in the home at the time of the initial placement of the child for adoption the newly amended birth record may include the names of both adopting parents despite the death of one of the adopting parents, upon receipt of an order from the court granting the adoption which directs under the authority of Section 221.72 of the Civil Code that the names of both adopting parents shall be included on the newly amended birth record.

SEC. 13. Section 10433.3 of the Health and Safety Code is amended to read:

10433.3. Notwithstanding any other provision of law, an adopting parent who has adopted a child for whom an amended record has already been prepared under authority of this article may have another amended record prepared for such child, upon application, furnishing a copy of the court order made in an action brought pursuant to Section 221.72 of the Civil Code, and payment of the required fee.

SEC. 14. Section 280 of the Penal Code is amended to read:

280. Every person who willfully causes or permits the removal or concealment of any child in violation of Section 222.50, 224.33, or 226.40 of the Civil Code is punishable as follows:

(a) By imprisonment in the county jail for not more than one year if the child is concealed within the county in which the adoption proceeding is pending or in which the child has been placed for

adoption, or is removed from that county to a place within this state; or

(b) By imprisonment in the state prison, or by imprisonment in the county jail for not more than one year if the child is removed from that county to a place outside of this state.

SEC. 15. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 222.70, 224.30, 226.52, or 227.10 of the Civil Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) The department shall notify parents or legal guardians requesting a background examination of a professional child care provider pursuant to Chapter 3.65 (commencing with Section 1597.80) of Division 2 of the Health and Safety Code, of the fact that

a substantiated report exists which indicates that the professional child care provider was a suspect of child abuse subsequent to January 1, 1981, or prior to January 1, 1981, if there was also a report subsequent to that date.

(5) The department shall notify parents or legal guardians requesting a background examination of a professional child care provider pursuant to Chapter 3.65 (commencing with Section 1597.80) of Division 2 of the Health and Safety Code, of the fact that no substantiated report exists which indicates that the professional child care provider was a suspect of child abuse subsequent to January 1, 1981.

SEC. 15.5. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded or which have been destroyed under Section 11169. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

No other public agency, except law enforcement agencies and state and local agencies responsible for licensing child care facilities, shall maintain an index of child abuse reports.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318, of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and

Safety Code, or Section 222.70, 224.30, 226.52, or 227.10 of the Civil Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) The department shall notify parents or legal guardians requesting a background examination of a professional child care provider pursuant to Chapter 3.65 (commencing with Section 1597.80) of Division 2 of the Health and Safety Code, of the fact that a substantiated report exists which indicates that the professional child care provider was a suspect of child abuse subsequent to January 1, 1981, or prior to January 1, 1981, if there was also a report subsequent to that date.

(5) The department shall notify parents or legal guardians requesting a background examination of a professional child care provider pursuant to Chapter 3.65 (commencing with Section 1597.80) of Division 2 of the Health and Safety Code, of the fact that no substantiated report exists which indicates that the professional child care provider was a suspect of child abuse subsequent to January 1, 1981.

(c) A school district shall not retain, collect, or otherwise possess any child abuse reports naming a child care custodian as perpetrator which have been determined to be unfounded as defined in Section 11165.12. Any of these unfounded reports in the possession or custody of any school district on January 1, 1991, shall be destroyed on or before January 15, 1991, or within 15 days after it has been determined to be unfounded and no copies may be made or retained by the school district. A school district shall be liable to any aggrieved child care custodian for damages and reasonable attorney's fees for violations of this subdivision.

A child protective agency shall advise the school district whenever a report of child abuse involving a child care custodian is deemed to be founded.

No report of suspected child abuse which names a child care custodian as perpetrator shall be retained by any public or private school district, nor may it be retained in any individual school files. However, if any reported incidents of child abuse form the basis for disciplinary action, the school or school district may maintain its customary record of the incidents in accordance with a memorandum of understanding adopted pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, but under no circumstances shall the record include any report of suspected child abuse pursuant to the Child Abuse Reporting Act.

SEC. 15.7. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not

contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 222.70, 224.30, 226.52, or 227.10 of the Civil Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

SEC. 15.9. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not

contain any reports that are determined to be unfounded or which have been destroyed under Section 11169. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

No other public agency, except law enforcement agencies and state and local agencies responsible for licensing child care facilities, shall maintain an index of child abuse reports.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318, of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter, inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 222.70, 224.30, 226.52, or 227.10 of the Civil Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(c) A school district shall not retain, collect, or otherwise possess any child abuse reports naming a child care custodian as perpetrator which have been determined to be unfounded as defined in Section 11165.12. Any of these unfounded reports in the possession or custody of any school district on January 1, 1991, shall be destroyed on or before January 15, 1991, or within 15 days after it has been determined to be unfounded and no copies may be made or retained by the school district. A school district shall be liable to any aggrieved child care custodian for damages and reasonable attorney's fees for violations of this subdivision.

A child protective agency shall advise the school district whenever a report of child abuse involving a child care custodian is deemed to be founded.

No report of suspected child abuse which names a child are custodian as perpetrator shall be retained by any public or private school district, nor may it be retained in any individual school files. However, if any reported incidents of child abuse form the basis for disciplinary action, the school or school district may maintain its customary record of the incidents in accordance with a memorandum of understanding adopted pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, but under no circumstances shall the record include any report of suspected child abuse pursuant to the Child Abuse Reporting Act.

SEC. 15.10. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded or which have been destroyed under Section 11169. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

No other public agency, except law enforcement agencies and state and local agencies responsible for licensing child care facilities, shall maintain an index of child abuse reports.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency shall, upon completion of the investigation or after there has been a final disposition in the matter,

inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 226 of the Civil Code. If the department has information which has been received subsequent to January 1, 1981, concerning such a person, it shall also make available to the State Department of Social Services or the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(c) A school district shall not retain, collect, or otherwise possess any child abuse reports naming a child care custodian as perpetrator which have been determined to be unfounded as defined in Section 11165.12. Any of these unfounded reports in the possession or custody of any school district on January 1, 1991, shall be destroyed on or before January 15, 1991, or within 15 days after it has been determined to be unfounded and no copies may be made or retained by the school district. A school district shall be liable to any aggrieved child care custodian for damages and reasonable attorney's fees for violations of this subdivision.

A child protective agency shall advise the school district whenever a report of child abuse involving a child care custodian is deemed to be founded.

No report of suspected child abuse which names a child care custodian as perpetrator shall be retained by any public or private school district, nor may it be retained in any individual school files. However, if any reported incidents of child abuse form the basis for disciplinary action, the school or school district may maintain its customary record of the incidents in accordance with a memorandum of understanding adopted pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, but under no circumstances shall the record

include any report of suspected child abuse pursuant to the Child Abuse Reporting Act.

SEC. 16. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Section 4600 of the Civil Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 221.20, 222.10, and 7017 of the Civil Code specify the exclusive procedures, after January 1, 1990, for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently sever the parent or parents' rights and order that the child be placed for adoption.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) It shall terminate parental rights if it determines by clear and convincing evidence that it is likely that the minor will be adopted. The findings pursuant to subdivision (b) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or Section 366.22 that a minor cannot or should not be returned to his or her parent or guardian, are a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following

circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 10 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days. During this 60-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(3) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor

shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(4) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require such protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel.

The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in such proportions as the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(f) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(g) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(h) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(i) If the court, by order or judgment declared the minor free from the custody and control of both parents, or one parent if the other no longer has custody and control, the court shall at the same time order the minor referred to a licensed county adoption agency for adoptive placement by the agency. However, no petition for adoption may be heard until the appellate rights of the natural

parents have been exhausted. The licensed county adoption agency shall be responsible for the care and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted.

(j) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(k) An order by the court directing that a hearing pursuant to this section be held is not an appealable order, but may be the subject of review by extraordinary writ.

SEC. 16.5. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Section 4600 of the Civil Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 221.20, 222.10, and 7017 of the Civil Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently sever the parent or parents' rights and order that the child be placed for adoption.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care,

subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) It shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or Section 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 10 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days. During this 60-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. At the expiration of this period, another hearing shall be held and the court

shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(3) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(4) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile

court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require such protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in such proportions as the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(f) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(g) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor

may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(h) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(i) If the court, by order or judgment declared the minor free from the custody and control of both parents, or one parent if the other no longer has custody and control, the court shall at the same time order the minor referred to a licensed county adoption agency for adoptive placement by the agency. However, no petition for adoption may be heard until the appellate rights of the natural parents have been exhausted. The licensed county adoption agency shall be responsible for the care and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted.

(j) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(k) An order by the court directing that a hearing pursuant to this section be held is not an appealable order, but may be the subject of review by extraordinary writ.

SEC. 17. Section 16101 of the Welfare and Institutions Code is amended to read:

16101. The cost of administering the adoption programs undertaken by a county under license issued pursuant to Section 16100 of this code shall be borne by the state in the amount found necessary by the department for proper and efficient administration. The state shall reimburse the county for all such necessary administrative costs, after deducting therefrom the amount of fees collected by the county agency pursuant to Section 222.72 of the Civil Code.

SEC. 18. Section 16106 of the Welfare and Institutions Code is

amended to read:

16106. The state shall reimburse each county for the cost of care of any child placed under the custody of a county department pursuant to Section 224.37 or 226.66 of the Civil Code. County claims for reimbursement of expenses incurred pursuant to Section 224.37 or 226.66 of the Civil Code shall be filed with the department at the time and in the manner specified by the department, and the claims shall be subject to audit by the department. Whenever a claim covering a prior fiscal year is found to have been in error, adjustment may be made on a current claim without the necessity of applying adjustment to the appropriation for the prior fiscal year.

SEC. 19. Section 16120 of the Welfare and Institutions Code is amended to read:

16120. Adoption Assistance Program benefits shall be provided only on behalf of special needs children for whom all of the following conditions are met:

(a) The department or licensed adoption agency and the prospective adoptive parent have signed an adoption assistance agreement which stipulates the need for and the amount of Adoption Assistance Program benefits. The adoption assistance agreement shall, at a minimum, specify the duration of assistance, the responsibility of the adopting family for reporting changes in circumstances, and the periodic recertification required for reevaluating the continuing needs of the family.

(b) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap which warrants the continuation of assistance.

(c) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and have signed an adoption assistance agreement.

(d) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent.

(e) The child has been either relinquished for adoption to a California agency or freed for adoption through termination of parental rights by a California court, or committed to the department pursuant to Section 224.37 or 226.66 of the Civil Code.

SEC. 20. Chapter 2.3 (commencing with Section 16140) of Part 4 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 21. Section 16507.6 of the Welfare and Institutions Code is amended to read:

16507.6. If a minor has been voluntarily placed with the county welfare department subsequent to January 1, 1982, for out-of-home placement by his or her parents or guardians pursuant to this chapter and the minor has remained out of their physical custody for six consecutive months, the department shall do one of the following:

(a) Return the minor to the physical custody of his or her parents or guardians.

(b) Refer the minor to a licensed adoption agency for consideration of adoptive planning and receipt of a permanent

relinquishment of care and custody rights from the parents pursuant to Section 222.10 of the Civil Code.

(c) Apply for a petition pursuant to Section 332 and file the petition with the juvenile court to have the minor declared a dependent child of the court under Section 300.

(d) For those children placed voluntarily prior to January 1, 1981, the six-month consecutive time period for provision of child welfare services shall commence October 1, 1982.

SEC. 22. Except with respect to this section and Sections 23, 24, 25, and 26, and except as otherwise provided in Section 25, this act shall become operative on July 1, 1991.

SEC. 23. Section 5.5 of this bill incorporates amendments to Section 232 of the Civil Code proposed by both this bill and SB 1583. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 232 of the Civil Code, and (3) this bill is enacted after SB 1583, in which case Section 232 of the Civil Code, as amended by SB 1583, shall remain operative only until July 1, 1991, at which time Section 5.5 of this bill shall become operative, and Section 5 of this bill shall not become operative.

SEC. 24. Section 11.5 of this bill incorporates amendments to Section 10125.5 of the Health and Safety Code proposed by both this bill and AB 3974. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 10125.5 of the Health and Safety Code, and (3) this bill is enacted after AB 3974, in which case Section 10125.5 of the Health and Safety Code, as amended by AB 3974, shall remain operative only until July 1, 1991, at which time Section 11.5 of this bill shall become operative, and Section 11 of this bill shall not become operative.

SEC. 25. (a) Section 15.5 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by both this bill and AB 2716. It shall only become operative if (1) both bills are enacted and become effective January 1, 1991, (2) each bill amends Section 11170 of the Penal Code, (3) this bill is enacted after AB 2716, (4) SB 2788 is not enacted or as enacted does not amend that section, and (5) this bill is enacted after AB 2716, in which case Section 11170 of the Penal Code, as amended by AB 2716, shall remain operative until July 1, 1991, at which time Section 15.5 of this bill shall become operative, and Sections 15, 15.7, 15.9, and 15.10 of this bill shall not become operative.

(b) Section 15.7 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by both this bill and SB 2788. It shall only become operative if (1) both bills are enacted and become effective January 1, 1991, (2) each bill amends Section 11170 of the Penal Code, (3) this bill is enacted after SB 2788, (4) AB 2716 is not enacted or as enacted does not amend that section, and (5) this bill is enacted after SB 2788, in which case Section 11170 of the Penal Code, as amended by SB 2788, shall remain operative until July 1,

1991, at which time Section 15.7 of this bill shall become operative, and Sections 15, 15.5, 15.9, and 15.10 of this bill shall not become operative.

(c) Section 15.9 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by this bill, AB 2716, and SB 2788. Section 15.10 of this bill incorporates the amendments to Section 11170 of the Penal Code proposed by both AB 2716 and SB 2788. Section 15.9 of this bill shall only become operative if (1) all three bills are enacted and become effective January 1, 1991, (2) all three bills amend Section 11170 of the Penal Code, and (3) this bill is enacted after AB 2716 and SB 2788, in which case Section 15.10 of this bill shall become operative January 1, 1991, and shall remain operative until July 1, 1991, at which time Section 15.9 of this bill shall become operative, and Sections 15, 15.5, and 15.7 of this bill shall not become operative.

SEC. 26. Section 16.5 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and SB 2232. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 2232, in which case Section 366.26 of the Welfare and Institutions Code, as amended by SB 2232, shall remain operative only until July 1, 1991, at which time Section 16.5 of this bill shall become operative, and Section 16 of this bill shall not become operative.

CHAPTER 1364

An act to amend Section 10086.5 of the Insurance Code, relating to earthquake insurance.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 27, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 10086.5 of the Insurance Code is amended to read:

10086.5. (a) The Legislature hereby finds and declares that the continued regulation of the business practices of insurers and their products is in the interest of the citizens of the state and that the control and limitation of unlawful nonrenewal, rejection, or cancellation of residential property insurance after an offer of earthquake coverage is accepted is an essential component of that regulation which is necessary to effectuate an adequate and complete system and regulation of insurer and producer business practices. The Legislature finds that this chapter continues to provide critical protection to insureds in this state from the

numerous consequences that would occur in the absence of that regulation.

(b) An insurer shall not refuse to renew, reject, or cancel a policy of residential property insurance after an offer of earthquake coverage is accepted solely because the insured has accepted that offer of earthquake coverage, except in cases in which the policy is terminated by the named insured.

(c) Underwriting standards applicable to residential property insurance shall not be applied in a discriminatory fashion against a person who accepts or elects to continue earthquake coverage.

CHAPTER 1365

An act to amend Section 25205.7 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 25, 1990 Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 25205.7 of the Health and Safety Code is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a permit for a hazardous waste facility which would manage extremely hazardous waste, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The board shall also assess a fee for any hazardous waste facility which intends to operate pursuant to a permit by regulation governed by this chapter or the regulations adopted pursuant to this chapter, which shall be due and payable upon the facility's notification to the department of its intent to operate in this manner. Except as provided in subdivision (i), the board shall not assess a fee pursuant to this section for an application for a hazardous waste facilities permit for a hazardous waste facility which has been previously operating pursuant to a grant of interim status pursuant to Section 25200.5. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or certification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A hazardous waste facility which is assessed a fee pursuant to more than one of subdivisions (c) to (i), inclusive, shall pay only the higher fee.

(b) The amounts stated in this section shall be base rates for the 1989–90 fiscal year. Thereafter the fees shall be adjusted annually to

reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government. The fee shall be assessed upon application or notification to the department.

(c) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay eighty-three thousand dollars ($83,000) for a small facility, one hundred seventy-seven thousand dollars ($177,000) for a medium facility, and three hundred four thousand dollars ($304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator for which the permit was required on or before July 1, 1989, shall pay fifty thousand dollars ($50,000) for a small facility, one hundred six thousand dollars ($106,000) for a medium facility, and one hundred eighty-two thousand dollars ($182,000) for a large facility. A person submitting a hazardous waste facilities permit application for any other incinerator shall pay a fee in accordance with subdivision (e). If the application was submitted before July 1, 1989, the fees specified in this subdivision shall not apply, and the fees specified in subdivision (e) shall instead apply.

(e) A person submitting a hazardous waste facilities permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars ($17,000) for a small facility, thirty-one thousand dollars ($31,000) for a medium facility, and sixty thousand dollars ($60,000) for a large facility.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars ($13,000) for a small unit, thirty thousand dollars ($30,000) for a medium unit, and sixty thousand dollars ($60,000) for a large unit.

(g) A person submitting a request for a variance shall pay three thousand dollars ($3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars ($300) for a variance issued pursuant to Section 25179.8, three hundred dollars ($300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste, eight hundred dollars ($800) for a variance from the requirements for hazardous waste haulers imposed by this chapter, and eight thousand dollars ($8,000) for all other variances. If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(h) A person required to notify the department of the person's intent to operate a facility pursuant to a permit by regulation shall pay one thousand dollars ($1,000) for each initial notification and not more than one thousand dollars ($1,000) for each notification thereafter, as specified in the regulations adopted by the department.

(i) A person applying for approval of an application to manage extremely hazardous waste shall pay two hundred dollars ($200), in addition to any other fee imposed by this section.

(j) (1) A person requesting a permit modification shall pay a fee equal to 70 percent of the fee for a new hazardous waste facilities permit for that facility, or 50 percent of the fee for a new permit for a land disposal facility or an incinerator, if the department's regulations require public notice and public comment before that modification may go into effect.

(2) Except as provided in paragraph (3), a person requesting any other permit modification not subject to paragraph (1) shall pay a fee of one thousand five hundred dollars ($1,500).

(3) A facility which applies for a new hazardous waste facilities permit, and which has been previously operating pursuant to a grant of interim status, or a facility which applies to renew a hazardous waste facilities permit, shall pay the fee specified in paragraph (1) if the applicant requests any modification for which, if the facility was permitted, the department's regulations would require public notice and public comment before the modification could go into effect.

(k) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(*l*) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department. For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(m) The fees assessed pursuant to this section do not apply to any variance issued to a local government agency to transport wastes for purposes of operating a household hazardous waste facility.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the

California Constitution.

CHAPTER 1366

An act to amend Sections 7028.1 and 7058.7 of the Business and Professions Code, to amend Sections 15399.18 and 15399.20 of the Government Code, to amend Sections 25299.10, 25299.32, 25299.36, 25299.37, 25299.50, 25299.51, 25299.52, 25299.53, 25299.54, 25299.55, and 25299.57 of, to amend and renumber Sections 25299.58, 25299.59, 25299.60, 25299.62, 25299.63, 25299.64, 25299.65, 25299.66, 25299.67, and 25299.68 of, to add Sections 25299.58 and 25299.61 to, and to repeal and add Sections 25299.40, 25299.41, and 25299.42 of, the Health and Safety Code, and to amend Sections 50107, 50108, 50113, 50114, 50119, 50123, 50124, 50129, 50131, 50132, 50134, 50136, 50139, 50140, 50157, and 50160 of, to add Sections 50108.1, 50108.2, 50112.1, 50112.2, 50112.3, 50113.1, 50113.2, 50120.1, 50120.2, 50120.3, 50142.1, and 50148.1 to, to repeal and add Sections 50109, 50110, 50111, and 50112 of, to amend the heading of Article 2 (commencing with Section 50113) of Chapter 3 of Part 26 of, to add an article heading immediately preceding Section 50108.1 of, and to add an article heading immediately preceding Section 50120.1 of, the Revenue and Taxation Code, relating to petroleum, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 7028.1 of the Business and Professions Code is amended to read:

7028.1. Any contractor who performs or engages in asbestos-related work, as defined in Section 6501.8 of the Labor Code, without certification pursuant to Section 7058.5 of this code, or who performs or engages in a removal or remedial action, as defined in subdivision (d) of Section 7058.7, or, on or after January 1, 1992, bids for the installation or removal of, or installs or removes, an underground storage tank, without certification pursuant to Section 7058.7, is subject to one of the following penalties:

(a) Conviction of a first offense is an infraction punishable by a fine of not less than one thousand dollars ($1,000) or more than three thousand dollars ($3,000), and by possible revocation or suspension of any contractor's license.

(b) Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any contractor's license, and a fine of not less than three thousand dollars ($3,000) or more than five thousand dollars ($5,000), or imprisonment in the county jail not exceeding one year, or both the fine and imprisonment.

SEC. 2. Section 7058.7 of the Business and Professions Code is amended to read:

7058.7. (a) No contractor shall engage in a removal or remedial action, as defined in subdivision (d), unless the applicant for the license has passed an approved hazardous substance removal certification examination.

(b) (1) The Contractors' State License Board, the Division of Occupational Safety and Health of the Department of Industrial Relations, and the State Department of Health Services shall jointly select an advisory committee, which shall be composed of two representatives of hazardous substance removal workers in California, two general engineering contractors in California, and two representatives of insurance companies in California who shall be selected by the Insurance Commissioner.

(2) The Contractors' State License Board shall develop a written test for the certification of contractors engaged in hazardous substance removal or remedial action, in consultation with the Division of Occupational Safety and Health, the State Water Resources Control Board, the State Department of Health Services, and the advisory committee.

(c) The Contractors' State License Board may require additional updated approved hazardous substance removal certification examinations of licensees currently certified based on new public or occupational health and safety information. The Contractors' State License Board, in consultation with the State Department of Health Services, shall approve initial and updated hazardous substance removal certification examinations and determine whether to require an updated certification examination of all current certificate holders.

(d) For purposes of this section "removal or remedial action" has the same meaning as found in Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, if the action requires the contractor to dig into the surface of the earth and remove the dug material and the action is at a site listed pursuant to Section 25356 of the Health and Safety Code or any other site listed as a hazardous waste site by the State Department of Health Services or a site listed on the National Priorities List compiled pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (42 U.S.C. Sec. 9601 et seq.). "Removal or remedial action" does not include asbestos-related work, as defined in Section 6501.8 of the Labor Code, or work related to a hazardous substance spill on a highway.

(e) (1) On and after January 1, 1992, a contractor shall not bid for the installation or removal of, or install or remove, an underground storage tank, unless the contractor has passed the hazardous substance removal certification examination developed pursuant to this section.

(2) For purposes of this subdivision, "underground storage tank" has the same meaning as defined in subdivision (x) of Section 25281

of the Health and Safety Code.

SEC. 3. Section 15399.18 of the Government Code is amended to read:

15399.18. (a) There is hereby created, in the California Economic Development Grant and Loan Fund, the Petroleum Financing Collection Account. The Petroleum Financing Collection Account is created solely for the purpose of receiving charges, fees, and income, including, but not limited to, the charges and costs collected pursuant to subdivision (c).

(b) To defray the costs of the department in administrating the loan program created pursuant to this chapter, the department may do all of the following:

(1) Impose reasonable charges on all applications and impose the loan fee specified in subdivision (e) of Section 15399.14.

(2) Recover collection costs from the borrower or other party.

(3) Earn income on any asset recovered pursuant to a loan default.

(c) The department shall deposit the charges and costs collected pursuant to subdivision (b), including the loan fees charged pursuant to subdivision (e) of Section 15399.14, in the Petroleum Financing Collection Account. Notwithstanding Section 13340, all money deposited in the Petroleum Financing Collection Account shall be continuously appropriated to the department for those costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but not be limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

SEC. 4. Section 15399.20 of the Government Code is amended to read:

15399.20. (a) Except as provided in subdivision (b), the department may, upon appropriation by the Legislature, expend an amount not more than one hundred fifty thousand dollars ($150,000) in any fiscal year for administrative expenses in carrying out this chapter from the subaccount in the Petroleum Underground Storage Tank Financing Account specified in subdivision (d) of Section 15399.17.

(b) The sum of sixty-five thousand dollars ($65,000) is hereby appropriated from the Petroleum Underground Storage Tank Financing Account to the department for the administrative expenses of carrying out this chapter from the effective date of the act adding this chapter until July 1, 1990.

(c) The department may transfer an amount of not more than two hundred thousand dollars ($200,000) from the Petroleum Underground Storage Tank Financing Account to the Petroleum Financing Collection Account.

SEC. 5. Section 25299.10 of the Health and Safety Code is

amended to read:

25299.10. The Legislature hereby finds and declares all of the following:

(a) It is estimated that approximately 90 percent of the underground storage tanks in the state contain petroleum and the remaining 10 percent of the tanks contain various chemical constituents.

(b) Although the exact extent of the problem is unknown, it is thought that a significant number of the underground storage tanks containing petroleum in the state may be leaking.

(c) In recent years, owners or operators of underground storage tanks have been unable to obtain affordable environmental impairment liability insurance coverage to pay for corrective action or the obtainable coverage has been outside their financial means.

(d) There are long-term threats to public health and water quality if a comprehensive, uniform, and efficient corrective action program is not established.

(e) It is in the best interest of the health and safety of the people of the state to establish a fund to pay for corrective action where coverage is not available.

(f) A uniform, comprehensive, and efficient program establishing financial responsibility and corrective action requirements for leaking underground storage tanks containing petroleum will enable private commercial insurers to expand the availability and affordability of insurance coverage.

(g) An efficient program of establishing corrective action requirements and funds or insurance coverage should encourage corrective action to be taken in the first instance by the owner or operator of the leaking underground storage tank containing petroleum.

(h) Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code provides for regulation of underground storage tanks and allows underground storage tanks to be regulated pursuant to a state program, in lieu of a federal program, in states which are authorized to implement these provisions.

(i) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to Chapter 6.7 (commencing with Section 25280), to authorize the state to implement the provisions of Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, including any acts amending or supplementing Subchapter IX and any federal regulations and guidelines adopted pursuant to Subchapter IX.

(j) It is in the public interest for the state to provide financial assistance to small businesses and farms which have limited financial resources, to ensure timely compliance with the law governing underground storage tanks, and to ensure the adequate protection

of groundwater.

SEC. 6. Section 25299.32 of the Health and Safety Code is amended to read:

25299.32. (a) The level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least ten thousand dollars ($10,000) for each occurrence, and at least ten thousand dollars ($10,000) annual aggregate coverage for taking corrective action.

(b) The level of financial responsibility required to be obtained pursuant to Section 25299.31 for each occurrence for bodily injury and property damage shall be in the amount specified by the board in the regulations adopted pursuant to Section 25299.77.

(c) The level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be in the amount specified by the board for annual aggregate coverage for both corrective action and bodily injury and property damage.

(d) The board may periodically increase the minimum level of financial responsibility specified in subdivision (a) upon its determination that private insurance is available and affordable.

SEC. 7. Section 25299.36 of the Health and Safety Code is amended to read:

25299.36. A regional board or a local agency may undertake or contract for corrective action pursuant to Section 25299.53 or if a situation exists which requires prompt action by the regional board or local agency to protect human health or the environment. If there is a situation which requires prompt action by the regional board to protect human health or the environment, the regional board may enter into oral contracts for this work, notwithstanding any other provision of law, and the contracts, whether written or oral, may include provisions for equipment rental and, in addition, the furnishing of labor and materials necessary to accomplish the work. These contracts for corrective action by the regional board are exempt from approval by the Department of General Services pursuant to Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code if the situation requires prompt action to protect human health or the environment.

SEC. 8. Section 25299.37 of the Health and Safety Code is amended to read:

25299.37. (a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this section and regulations adopted pursuant to Section 25299.77.

(b) Any corrective action conducted pursuant to this section shall ensure protection of human health, safety, and the environment. The corrective action shall be consistent with any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the

Water Code, and all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code.

(c) The local agency may issue an order to the owner, operator, or other responsible party requiring compliance with this section, including a time schedule or completion of specific actions. The board or a regional board may require compliance with this section as part of a cleanup and abatement order issued pursuant to Section 13304 of the Water Code. The owner, operator, or other responsible party shall conduct corrective action in accordance with any order issued by a local agency or cleanup and abatement order issued pursuant to this section.

(d) A person to whom an order is issued pursuant to subdivision (c), shall have the same rights of administrative and judicial appeal and review as are provided by law for cleanup and abatement orders issued pursuant to Section 13304 of the Water Code.

(e) Until the board adopts regulations pursuant to Section 25299.77, the owner, operator, or other responsible party shall take corrective action in accordance with Chapter 6.7 (commencing with Section 25280) and the federal act.

(f) If a person to whom an order is issued pursuant to subdivision (c) does not comply with the order, the regional board or the local agency may undertake or contract for corrective action and recover costs pursuant to Section 25299.70.

SEC. 9. Section 25299.40 of the Health and Safety Code is repealed.

SEC. 10. Section 25299.40 is added to the Health and Safety Code, to read:

25299.40. The Legislature hereby declares that the storage fees imposed by this article do not constitute a tax and are not collected for purposes of increasing state revenues pursuant to Section 3 of Article XIII A of the California Constitution.

SEC. 11. Section 25299.41 of the Health and Safety Code is repealed.

SEC. 12. Section 25299.41 is added to the Health and Safety Code, to read:

25299.41. For purposes of implementing this chapter, every owner of an underground storage tank who is required to obtain a permit to own or operate a tank pursuant to Section 25284 shall pay a storage fee of six mills ($0.006) for each gallon of petroleum placed in an underground storage tank which he or she owns. The fee imposed pursuant to this section shall be paid to the State Board of Equalization pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

SEC. 13. Section 25299.42 of the Health and Safety Code is repealed.

SEC. 14. Section 25299.42 is added to the Health and Safety Code, to read:

25299.42. (a) The State Board of Equalization may adopt regulations to carry out Section 25299.41, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

(b) The State Board of Equalization shall collect the fee imposed by this article commencing on the first day of the first calendar quarter which begins more than 90 days after the effective date of the act adding this article.

(c) The State Board of Equalization shall deposit all fees collected pursuant to this article in the fund.

SEC. 15. Section 25299.50 of the Health and Safety Code is amended to read:

25299.50. (a) The Underground Storage Tank Cleanup Fund is hereby created in the General Fund and may be expended by the board for the purposes of this chapter. From time to time, the board may modify existing accounts or create accounts in the fund or other funds administered by the board, which the board determines are appropriate or necessary for proper administration of this chapter.

(b) All of the following amounts shall be deposited in the fund:

(1) Money appropriated by the Legislature for deposit in the fund.

(2) The fees, interest, and penalties collected pursuant to Article 5 (commencing with Section 25299.40).

(3) Notwithstanding Section 16475 of the Government Code, any interest earned upon the money deposited in the fund.

(4) Any money recovered by the fund pursuant to Section 25299.70.

(5) Any civil penalties collected by the board or regional board pursuant to Section 25299.76.

(6) Any money deposited in the fund pursuant to Section 7 of the act adding this chapter.

SEC. 16. Section 25299.51 of the Health and Safety Code is amended to read:

25299.51. The board may expend the money in the fund for all the following purposes:

(a) In addition to the purposes specified in subdivision (c) and (d), for expenditure by the board for the costs of implementing this chapter.

(b) To pay for the administrative costs of the State Board of Equalization in collecting the fee imposed by Article 5 (commencing with Section 25299.40).

(c) To pay for the reasonable and necessary costs of the regional board or local agency for corrective action pursuant to Section 25299.36, up to one million dollars ($1,000,000) per occurrence. The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal year, for prompt action in response to any unauthorized release.

(d) To pay for the costs of an agreement for the abatement of, and oversight of the abatement of, an unauthorized release of hazardous substances from underground storage tanks, by a local agency, as

authorized by Section 25297.1 or by any other provision of law, except that, for the purpose of expenditure of these funds, only underground storage tanks, as defined in Section 25299.24, shall be the subject of the agreement.

(d) To pay for the costs of cleanup and oversight of unauthorized releases at abandoned tank sites. The board shall not expend more than 25 percent of the total amount of money collected and deposited in the fund annually for the purposes of this subdivision and subdivision (h).

(f) To pay claims pursuant to Section 25299.57.

(g) To pay, upon order of the Controller, for refunds pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(h) To pay for the reasonable and necessary costs of the regional board or the local agency for corrective action pursuant to subdivision (f) of Section 25299.3.

(i) To pay claims pursuant to Section 25299.58.

SEC. 17. Section 25299.52 of the Health and Safety Code is amended to read:

25299.52. (a) The board shall adopt a priority ranking list at least twice annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.

(b) In awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following priorities:

(1) Owners of tanks which are located on residential property.

(2) Owners and operators of tanks who meet the requirements of subdivision (a) of Section 15399.12 of the Government Code.

(3) Owners or operators of tanks, if the owner or operator owns and operates a business which employs fewer than 500 full-time and part-time employees, is independently owned and operated, is not dominant in its field of operations, and all business operations are located in California.

(4) All other tank owners and operators.

(c) The fund may sue and be sued in its own name.

SEC. 18. Section 25299.53 of the Health and Safety Code is amended to read:

25299.53. (a) A regional board or a local agency taking, or contracting for, corrective action pursuant to subdivision (f) of Section 25299.37 shall, before commencing the corrective action, take both of the following actions:

(1) The regional board or local agency shall notify the board of the planned corrective action. If an owner or operator is taking the corrective action in accordance with Section 25299.37, the regional board or local agency shall not initiate a corrective action pursuant to this chapter.

(2) If an owner or operator is not taking or has not taken the

action specified in paragraph (1), the regional board or local agency shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate. The regional board or local agency shall obtain approval of the corrective action and the cost estimate before taking, or contracting for, any corrective action.

(b) If the board approves the request of the regional board or local agency made pursuant to paragraph (2) of subdivision (a), the board shall, after making the determination specified in subdivision (c), pay for the costs of corrective action performed by a regional board, local agency, or qualified contractor.

(c) The board shall not make any payment pursuant to subdivision (b) unless the board determines that the owner or operator of the underground tank has failed or refused to comply with a final order for corrective action issued pursuant to Section 25299.37 with respect to the unauthorized release of petroleum from the underground storage tank.

(d) Upon making any payment to a regional board or local agency pursuant to subdivision (b), the board shall recover the amount of payment pursuant to Section 25299.70.

SEC. 19. Section 25299.54 of the Health and Safety Code is amended to read:

25299.54. (a) Except as provided in subdivisions (b), (c), and (d), an owner or operator, required to perform corrective action pursuant to Section 25299.37, or an owner or operator who, as of January 1, 1988, is required to perform corrective action, who has initiated this action in accordance with Division 7 (commencing with Section 13000) of the Water Code, who is undertaking corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, or Chapter 6.7 (commencing with Section 25280), may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) A person who has failed to comply with Article 3 (commencing with Section 25299.30) is ineligible to file a claim pursuant to this section.

(c) Any owner or operator of an underground storage tank containing petroleum is ineligible to file a claim pursuant to this section if the person meets both of the following conditions:

(1) The person knew, before January 1, 1988, of the unauthorized release of petroleum which is the subject of the claim.

(2) The person did not initiate, on or before June 30, 1988, any corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code concerning the release, or the person did not, on or before June 30, 1988, initiate corrective action in accordance with Chapter 6.7 (commencing with Section 25280) or the person did not initiate action on or before June 30, 1988, to come into compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of

the Water Code concerning the release.

(d) An owner or operator who violates Article 4 (commencing with Section 25299.36) is liable for any corrective action costs which result from the owner's or operator's violation of Article 4 (commencing with Section 25299.36) and is ineligible to file a claim pursuant to this section.

(e) Whenever the board has authorized the prepayment of a claim pursuant to Section 25299.57, and the amount of money available in the fund is insufficient to pay the claim, the owner or operator shall remain obligated to undertake the corrective action in accordance with Section 25299.37.

SEC. 20. Section 25299.55 of the Health and Safety Code is amended to read:

25299.55. The board shall prescribe appropriate forms and procedures for claims filed pursuant to Section 25299.54 which shall include, at a minimum, all of the following:

(a) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant's knowledge.

(b) A full description, supported by appropriate evidence from government agencies, of the unauthorized release of petroleum into the environment from an underground storage tank claimed to be the subject of the third-party judgment specified in Section 25299.58 or the corrective action performed pursuant to Section 25299.36.

(c) Certification by the claimant of all costs which have been, or will be, incurred in undertaking corrective action after January 1, 1988.

SEC. 21. Section 25299.57 of the Health and Safety Code is amended to read:

25299.57. (a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of corrective actions which exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32 but not more than nine hundred ninety thousand dollars ($990,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who has initiated this action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280) who is undertaking corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who has not completed the action on the effective date of the act adding this chapter, may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) For claims eligible for reimbursement pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the actual cost of corrective action to the board, which shall either approve or disapprove the costs incurred as reasonable and necessary.

(c) For claims eligible for prepayment pursuant to subdivision (c)

of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(d) A claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25299.37, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) The claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(4) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of credit authorizing payment of the costs from the fund.

(f) The claimant may submit a claim for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) Any claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

SEC. 22. Section 25299.58 of the Health and Safety Code is amended and renumbered to read:

25299.59. (a) Except as specified in subdivision (b), the procedures in Section 11513 of the Government Code apply to the proceedings conducted by the board pursuant to this article.

(b) Notwithstanding subdivision (a), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to the proceedings conducted by the board pursuant to this article.

(c) This article does not require any person to pursue a claim against the board pursuant to this article before seeking any other remedy.

(d) If the board has paid out of the fund for any costs of corrective action, the board shall not pay any other claim out of the fund for the same costs.

(e) Notwithstanding Sections 25299.57 and 25299.58, the board shall not reimburse or authorize prepayment of any claim in an aggregate amount exceeding nine hundred ninety thousand ($990,000) for a claim arising from the same event or occurrence.

(f) The board may conduct an audit of any corrective action claim honored pursuant to this chapter. The claimant shall reimburse the state for any costs disallowed in the audit. A claimant shall preserve, and make available, upon request of the board or the board's designee, all records pertaining to the corrective action claim for a

period of three years after the final payment is made to the claimant.

SEC. 23. Section 25299.58 is added to the Health and Safety Code, to read:

25299.58. (a) If the board makes the determination specified in subdivision (b), the board may only reimburse those costs which are related to the compensation of third parties for bodily injury and property damages and which exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32 but not more than nine hundred ninety thousand dollars ($990,000) for each occurrence.

(b) A claim may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant has been ordered to pay a settlement or final judgment for third-party bodily injury or property damage arising from operating an underground storage tank.

(3) The claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(4) The claimant is required to undertake or contract for corrective action pursuant to Section 25299.37, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280).

SEC. 24. Section 25299.59 of the Health and Safety Code is amended and renumbered to read:

25299.60. (a) The board shall not pay any claims against or presented to the fund pursuant to this article if the claim exceeds the total money in the fund at any one time. The board shall pay these claims only when additional money is collected, appropriated, or otherwise added to the fund. If the total claims outstanding at any time exceed the current balance of the fund, the board shall pay these claims in full to the extent authorized pursuant to this article.

(b) Any claim filed against the fund pursuant to this article may be paid only out of the fund. This chapter does not authorize the payment by the state of any additional amount with respect to any claim out of any source other than the fund.

(c) Notwithstanding this article, the board shall not pay out any claims pursuant to this article to a claimant if the total amount paid to the claimant is greater than 5 percent of the total amount annually appropriated by the Legislature from the fund for purposes of paying claims pursuant to this article. For purposes of determining the total amount paid to a claimant for purposes of this section, the board shall include any payments made to any person or entity which has a relationship with the claimant specified in subsection (b) of Section 267 of Title 26 of the United States Code.

SEC. 25. Section 25299.60 of the Health and Safety Code is amended and renumbered to read:

25299.70. (a) Any costs incurred and payable from the fund pursuant to subdivisions (c), (e), and (h) of Section 25299.51 shall be recovered by the Attorney General, upon request of the board, from the owner or operator of the underground storage tank which released the petroleum and which is the subject of these costs.

(b) The liability of an owner or operator shall be the full and total costs specified in subdivision (a) if the owner or operator has not complied with the requirements of Article 3 (commencing with Section 25299.30) or Article 4 (commencing with Section 25299.36).

(c) The amount of costs determined pursuant to this section shall be recoverable in a civil action. This section does not deprive a party of any defense the party may have.

(d) Moneys recovered by the Attorney General pursuant to this section shall be deposited in the fund.

SEC. 26. Section 25299.61 is added to the Health and Safety Code, to read:

25299.61. The board shall not pay any claims against or presented to the fund pursuant to this article if the claims are in connection with an unauthorized release of petroleum into the environment from an underground storage tank resulting from the gross negligence or the intentional or reckless acts of the claimant.

SEC. 27. Section 25299.62 of the Health and Safety Code is amended and renumbered to read:

25299.72. Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures of the type recoverable pursuant to this article.

SEC. 28. Section 25299.63 of the Health and Safety Code is amended and renumbered to read:

25299.73. The standard of liability for any costs of corrective action recoverable pursuant to this chapter is strict liability.

SEC. 29. Section 25299.64 of the Health and Safety Code is amended and renumbered to read:

25299.74. (a) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to preclude any liability for costs recoverable under this article. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs under this chapter.

(b) The entry of judgment against any party to the action does not bar any future action by the fund against any person who is later discovered to be potentially liable for costs paid from the fund.

(c) Payment of any claim by the fund pursuant to this chapter shall be subject to the state acquiring by subrogation the rights of the claimant to recover those costs of corrective action for which it has compensated the claimant from the person responsible or liable for the unauthorized release.

SEC. 30. Section 25299.65 of the Health and Safety Code is amended and renumbered to read:

25299.75. (a) Except as provided in Sections 25299.70, 25299.72, and 25299.73, this chapter does not affect or modify the obligations

or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from an unauthorized release of petroleum or for corrective action or the costs of corrective action.

(b) This chapter shall not be construed as authorizing recovery for costs of corrective action resulting from any release authorized or permitted pursuant to state or federal law.

SEC. 31. Section 25299.66 of the Health and Safety Code is amended and renumbered to read:

25299.76. (a) Any person who violates any requirement of Article 3 (commencing with Section 25299.30) or Article 4 (commencing with Section 25299.36) is liable for a civil penalty of not more than ten thousand dollars ($10,000) for each underground storage tank for each day of violation.

(b) The state or a local agency may bring an action in superior court to impose the civil penalty specified in subdivision (a).

(c) The board or a regional board may impose the civil penalty specified in subdivision (a) pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(d) In determining the amount of any liability imposed under this section, the superior court, the board, or the regional board shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, the economic benefits or savings, if any, resulting from the violations, and other matters as justice may require.

(e) Remedies under this section are in addition to, and do not supersede or limit, any other civil or criminal remedies, except that no civil penalties shall be recovered under this section for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code.

SEC. 32. Section 25299.67 of the Health and Safety Code is amended and renumbered to read:

25299.77. The board shall adopt regulations to implement this chapter. In adopting these regulations, the board shall ensure that the regulations are consistent with this chapter, Chapter 6.7 (commencing with Section 25280), and the requirements for state programs implementing the federal act. When adopting regulations to implement this chapter, including the adoption of regulations establishing requirements for demonstrating financial responsibility pursuant to Article 3 (commencing with Section 25299.30), and establishing corrective action requirements pursuant to Article 4 (commencing with Section 25299.36), the board may adopt the regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate

preservation of the public peace, health, and safety and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulation adopted by the board pursuant to this section shall be filed with, but not repealed by, the Office of Administrative Law, and shall remain in effect until revised by the board.

SEC. 33. Section 25299.68 of the Health and Safety Code is amended and renumbered to read:

25299.78. (a) To carry out the purposes of this chapter, any authorized representative of the local agency, regional board, or board shall have the authority specified in Section 25185, with respect to any place where underground storage tanks are located, and in Section 25185.5, with respect to any real property which is within 2,000 feet of any place where underground storage tanks are located.

(b) An owner or operator shall furnish, under penalty of perjury, any information on financial responsibility, unauthorized releases, or corrective action as the local agency, regional board, or board may require.

SEC. 34. Section 50107 of the Revenue and Taxation Code is amended to read:

50107. "Fee payer" means any person liable for the payment of a fee imposed by Section 25299.41 of the Health and Safety Code.

SEC. 35. Section 50108 of the Revenue and Taxation Code is amended to read:

50108. The fee imposed pursuant to Section 25299.41 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

SEC. 36. An article heading is added immediately preceding Section 50108.1 of the Revenue and Taxation Code, to read:

Article 2. Registration and Security

SEC. 37. Section 50108.1 is added to the Revenue and Taxation Code, to read:

50108.1. Every person who is required to have a permit to own or operate an underground storage tank pursuant to Section 25284 of the Health and Safety Code containing petroleum shall register with the board on forms provided by the board.

SEC. 38. Section 50108.2 is added to the Revenue and Taxation Code, to read:

50108.2. (a) The board, whenever it determines it to be necessary to ensure compliance with this part, may require any person subject to this part to place with it any security that the board determines to be reasonable, taking into account the circumstances of that person. The board may sell the security at a public auction if it becomes necessary to do so in order to recover any fee or any amount required to be collected, including any interest or penalty due.

(b) Notice of the sale authorized in subdivision (a) shall be served upon the person who placed the security personally or by mail. If service is made by mail, the notice shall be addressed to the person at his or her address as it appears in the records of the board. Service shall be made at least 30 days prior to the sale in the case of personal service, and at least 40 days prior to the sale in the case of service by mail. Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at a private sale at a price not lower than the prevailing market price. Upon any sale, any surplus above the amounts due shall be returned to the person who placed the security.

SEC. 39. Section 50109 of the Revenue and Taxation Code is repealed:

SEC. 40. Section 50109 is added to the Revenue and Taxation Code, to read:

50109. The fee collected under Section 50108 is due and payable to the board quarterly on or before the 25th day of the month following the end of each calendar quarter. Each fee payer, on or before the 25th day of the month following the quarterly period for which the fee is due, shall prepare a fee return for the preceding quarterly period, in the form as prescribed by the board, showing the total number of gallons of petroleum placed into underground storage tanks which he or she owns during the period, the amount of the fee for the period covered by the return, and any other information that the board determines to be necessary. The fee payer shall deliver the return, together with a remittance of the amount of the fee due, to the office of the board on or before the 25th day of the month following the quarterly period for which the fee is due.

SEC. 41. Section 50110 of the Revenue and Taxation Code is repealed.

SEC. 42. Section 50110 is added to the Revenue and Taxation Code, to read:

50110. The board, if it determines it to be necessary in order to facilitate the administration of this part, may require returns and payments specified under Section 50109 to be made for periods other than quarterly.

SEC. 43. Section 50111 of the Revenue and Taxation Code is repealed.

SEC. 44. Section 50111 is added to the Revenue and Taxation Code, to read:

50111. (a) The board for a good cause may extend, for up to one month, the time period within which a person is required to submit a report or pay a sum of money under this part. The extension may be granted at any time if a request is filed with the board within, or prior to the commencement of, the period for which the extension may be granted.

(b) Any person to whom an extension is granted shall pay, in

addition to the fee, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee would have been due without the extension until the date of payment.

SEC. 45. Section 50112 of the Revenue and Taxation Code is repealed.

SEC. 46. Section 50112 is added to the Revenue and Taxation Code, to read:

50112. If the fee is not paid to the board within the time prescribed for the payment of the fee, a penalty of 10 percent of the amount of the fee shall be added to the amount due.

SEC. 47. Section 50112.1 is added to the Revenue and Taxation Code, to read:

50112.1. All fees not paid on the date when due and payable shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from that date until the date of payment.

SEC. 48. Section 50112.2 is added to the Revenue and Taxation Code, to read:

50112.2. (a) If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Section 50112.

(b) Any person seeking to be relieved of the penalty provided by Section 50112 shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 49. Section 50112.3 is added to the Revenue and Taxation Code, to read:

50112.3. (a) If the board finds that a person's failure to make a timely report or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 50111 and 50112.1.

(b) Any person seeking to be relieved of the interest provided by Sections 50111 and 50112.1 shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 50. The heading of Article 2 (commencing with Section 50113) of Chapter 3 of Part 26 of the Revenue and Taxation Code is amended to read:

Article 2. Deficiency Determinations

SEC. 51. Section 50113 of the Revenue and Taxation Code is amended to read:

50113. (a) If the board is dissatisfied with the report filed or the amount of fee paid to the board under this part by any fee payer, or if no report has been filed or no payment or payments of the fees have been made to the state by a fee payer, the board may compute and determine the amount to be paid, based upon any information available to it. One or more additional determinations may be made of the amount of fee due for one, or for more than one, period. The amount of fee so determined shall bear interest at the modified rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the fee, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or regulations adopted by the board pursuant to this part, a penalty of 10 percent of the amount of that determination shall be added, plus interest as provided in subdivision (a).

(c) If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade this part or regulations adopted pursuant to this part, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the fee payer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the fee payer at the fee payer's address as it appears in the records of the board. The giving of the notice shall be deemed complete at the time of the deposit in a United States Post Office, or a mailbox, subpost office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, the board may serve notice personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. The board may make personal service to a corporation by delivering a notice to any person designated in the Code of Civil Procedure to be served for the corporation with a summons and complaint in a civil action.

SEC. 52. Section 50113.1 is added to the Revenue and Taxation Code, to read:

50113.1. Except in the case of fraud, intent to evade this part, or rules and regulations adopted pursuant to this part, or failure to make a report, every notice of a determination of an additional amount due shall be given within three years after the date when the amount was required to have been paid. In the case of failure to make a report, the notice of determination shall be mailed within eight years after the date the amount of the fee was due.

SEC. 53. Section 50113.2 is added to the Revenue and Taxation

Code, to read:

50113.2. If, before the expiration of the time prescribed in Section 50113.1 for the mailing of a notice of deficiency determination, the fee payer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

SEC. 54. Section 50114 of the Revenue and Taxation Code is amended to read:

50114. Any person from whom an amount is determined to be due under Article 2 (commencing with Section 50113), or any person directly interested, may petition for a redetermination thereof within 30 days after service of a notice of determination on that person. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration of that time period.

SEC. 55. Section 50119 of the Revenue and Taxation Code is amended to read:

50119. All amounts determined to be due by the board under Article 2 (commencing with Section 50113) are due and payable at the time they become final, and, if not paid when due and payable, a penalty of 10 percent of the amount determined to be due shall be added to the amount due and payable.

SEC. 56. An article heading is added immediately preceding Section 50120.1 of the Revenue and Taxation Code, to read:

Article 4. Jeopardy Determinations

SEC. 57. Section 50120.1 is added to the Revenue and Taxation Code, to read:

50120.1. If the board determines that the collection of any amount of fee will be jeopardized by delay, it shall thereupon make a determination of the amount of fee due, noting that fact upon the determination, and the amount of the fee shall be immediately due and payable. If the amount of the fee, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the feepayer of a notice of the determination, the determination becomes final, and the delinquency penalty provided in Section 50112 and the interest provided in 50112.1 shall attach to the amount of fee specified in the jeopardy determination.

SEC. 58. Section 50120.2 is added to the Revenue and Taxation Code, to read:

50120.2. The fee payer against whom a jeopardy determination is made may file a petition for the redetermination thereof, pursuant to Article 3 (commencing with Section 50114), with the board within 10 days after the service upon the fee payer of notice of the determination, and he or she shall, within the 10-day period, deposit

with the board that security which the board determines to be necessary to ensure compliance with this part. The security may be sold by the board at a public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by subdivision (d) of Section 50113. After that sale, the surplus, if any, above the amount due under this part shall be returned to the person who deposited the security.

SEC. 59. Section 50120.3 is added to the Revenue and Taxation Code, to read:

50120.3. (a) In accordance with rules and regulations which the board may adopt, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(1) To establish that the determination is excessive.

(2) To establish that the sale of property that may be seized after issuance of the jeopardy determination, or any part thereof, shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(3) To request the release of all or part of the property to the person.

(4) To request a stay of collection activities.

(b) The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. The person shall not be required to post any security in order to file the application and to obtain the hearing. However, if the person does not deposit, within the 10-day period prescribed in Section 50120.2, that security which the board determines to be necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except for sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for an administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section does not affect Section 50120.1, relating to the finality date of the determination, and the attachment of the delinquency penalty and interest.

SEC. 60. Section 50123 of the Revenue and Taxation Code is amended to read:

50123. If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount, including interest and penalties, together with any costs in addition to the amount, are a perfected and enforceable state tax lien which is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

SEC. 61. Section 50124 of the Revenue and Taxation Code is amended to read:

50124. (a) If the board detemines that the amount of any fees, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the fee and penalties, the board may at any time release all, or any portion of, the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds the liability represented by the lien imposed under this article is legally unenforceable, the board may release the lien.

(c) A certificate by the board that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated, as provided in the certificate.

SEC. 62. Section 50129 of the Revenue and Taxation Code is amended to read:

50129. (a) Notice of the sale, and the time and place of the sale, shall be given to the delinquent fee payer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale. The notice shall be personally served or enclosed in an envelope addressed to the fee payer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and depositing it in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(1) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest to the property is to be sold.

(2) One conspicuous place on the property.

(b) The notice shall contain a description of the property to be sold, a statement of the amount of the fees, interest, penalties, and costs, the name of the fee payer, and the further statement that unless the fees, interest, penalties, and costs are paid on or before the time fixed in the notice of the sale, the property, or so much of the property as may be necessary, will be sold in accordance with law and the notice.

SEC. 63. Section 50131 of the Revenue and Taxation Code is amended to read:

50131. If, after a sale conducted pursuant to this article, the money received exceeds the amount of all fees, interest, penalties, and costs due the state from the fee payer, the board shall return the excess to the fee payer and obtain the fee payer's receipt. If any persons having an interest in or lien upon the property files with the board prior to the sale notice of the person's interest, the board shall

withhold any excess pending a determination of the rights of the respective parties to the party by a court of competent jurisdiction. If the receipt of the fee payer is not available, the board shall deposit the excess moneys with the Treasurer, as trustee for the owner, subject to the order of the fee payer, and the fee payer's heirs, successors, or assigns.

SEC. 64. Section 50132 of the Revenue and Taxation Code is amended to read:

50132. If any fee payer is delinquent in the payment of any obligation imposed by this part, or if any determination has been made against a fee payer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail, to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the fee payer, or owing any debts to the fee payer. In the case of any state officer, department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent fee payer to the Controller.

SEC. 65. Section 50134 of the Revenue and Taxation Code is amended to read:

50134. All persons notified pursuant to Section 50132 shall immediately, after receipt of the notice, advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, to be effective, shall state the amount, interest, and penalty due from the person and shall be delivered or mailed to the branch or office of the bank at which the deposit is carried or at which the credits or personal property are held. Notwithstanding any other provision of law, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of the amount, interest, and penalty due from the person.

SEC. 66. Section 50136 of the Revenue and Taxation Code is amended to read:

50136. (a) The board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a fee payer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the fee payer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may

designate.

(b) In the case of a financial institution, to be effective, the notice shall state the amount due from the fee payer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property are held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 67. Section 50139 of the Revenue and Taxation Code is amended to read:

50139. (a) If the board determines that any amount of fee, interest, or penalty has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in the records of the board and shall certify to the State Board of Control the amount collected in excess of what was legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Control, the excess amount collected or paid shall be credited on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or the person's successors, administrators, or executors.

(b) Notwithstanding subdivision (a), in the case of a determination by the board that an amount of not more than fifty thousand dollars ($50,000) was not required to be paid under this part, the board, without obtaining the approval of the State Board of Control, may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or the person's successors, administrators, or executors.

SEC. 68. Section 50140 of the Revenue and Taxation Code is amended to read:

50140. (a) Except as provided in subdivision (b), the board shall not approve a refund three years after the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 50113) of Chapter 3, within six months after the determinations have become final, whichever period expires later, unless a claim therefor is filed with the board within that period. The board shall not approve a credit after the expiration of that period, unless a claim for credit is filed with the board within that period.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 50113.2 if a claim is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

SEC. 69. Section 50142.1 is added to the Revenue and Taxation Code, to read:

50142.1. Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the due date of the return for the period for which the overpayment was made, but

no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant is notified by the board that a claim may be filed or the date upon which the claim is certified to the State Board of Control, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the fee or amount against which the credit is applied.

SEC. 70. Section 50148.1 is added to the Revenue and Taxation Code, to read:

50148.1. In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

SEC. 71. Section 50157 of the Revenue and Taxation Code is amended to read:

50157. All fees, interest, and penalties imposed, and all amounts of fees, required to be paid to the state pursuant to Section 50108 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the Underground Storage Tank Cleanup Fund in the General Fund.

SEC. 72. Section 50160 of the Revenue and Taxation Code is amended to read:

50160. A fee payer's successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, may be given information regarding the determination of any unpaid fee or the amount of fees, interest, or penalties required to be collected or assessed.

SEC. 73. The sum of four million dollars ($4,000,000) is hereby transferred from the Underground Storage Tank Cleanup Fund in the General Fund to the Petroleum Underground Storage Tank Financing Account in the General Fund, and appropriated therefrom, to the Department of Commerce for the purposes specified in Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code. It is the intent of the Legislature that this amount of funds be annually appropriated in the Budget Act from the Underground Storage Tank Cleanup Fund to the Department of Commerce for the purposes specified in Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code.

The transfer of funds from the Underground Storage Tank Cleanup Fund to the Petroleum Underground Storage Tank Financing Account made by this section shall become operative only

when the Underground Storage Tank Cleanup Fund has achieved a balance of four million dollars ($4,000,000).

SEC. 74. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 75. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to assure the expeditious cleanup of leaking underground storage tanks located in the state containing petroleum, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1367

An act to add and repeal Section 1214.3 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 27, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 1214.3 is added to the Penal Code, to read:

1214.3. (a) Any county, by resolution of its board of supervisors, may establish a "Misdemeanor and Traffic Violation Pilot Project" within any judicial district within the county pursuant to this section.

(b) Notwithstanding any other provision of law, whenever a person is issued a citation for any violation of this code or of the Vehicle Code not declared to be a felony, or for any violation of an ordinance of a city, county, or a city and county relating to a traffic offense, the person shall be advised verbally and in writing of the nature of the violation and of the procedures relative to additional civil assessments described in this section. Written notice given to the defendant shall serve as prima facie acknowledgment of proof of service and shall include the defendant's name, notice to appear (citation) number, defendant's signature and date of signature, issuer's name, agency, employee identification number and date of issuance, and any other information deemed appropriate by the public agency. This information also shall be mailed to the person in

a notice sent to the address given by the person on the citation. The notice shall contain the amount of the bail or fine for the offense and a form upon which the defendant may disclose his or her financial inability to pay the fine or bail, requesting a payment schedule to be arranged. The defendant's disclosure shall be signed by the defendant under penalty of perjury. The notice also shall contain a notice that if the defendant elects to appear in court to contest the charges, he or she may appear at a date and time specified by the court in the notice and shall sign a promise to appear on that specified date and time.

(c) The defendant shall do one of the following within 30 days of receipt of the mailed notice:

(1) Pay the fine or post bail.

(2) Return the completed financial statement to the court.

(3) Return the promise to appear for trial.

(d) The notice shall include a return envelope from the court and a statement that failure to proceed pursuant to subdivision (c) will result in the issuance of a judgment in the amount of five hundred dollars ($500), in addition to liability for the amount of the fine.

(e) Where appropriate, all written advisements or notices given or sent pursuant to this section shall be in both English and Spanish.

(f) If the defendant does not respond within 30 days of receipt of the notice, the court shall send the defendant a notice of intent to issue judgment which shall advise the defendant that if he or she does not appear within 10 days, the five hundred dollars ($500) will become collectible as civil damages.

(g) If the defendant does not respond within 10 days of the issuance of the intent to issue judgment, the court shall issue a writ of execution and the five hundred dollars ($500) shall be collectible as civil damages.

(h) If a writ of execution is issued for collection of a civil assessment, the same writ also shall include an attachment for the amount of the fine or forfeiture for the underlying offense.

(i) The costs of levying, storing, or safekeeping all personal and real property seized by a levying officer in effectuating any process issued pursuant to this section shall be the responsibility of the owner of the property.

(j) After the writ of execution has been issued, the defendant may appear and, upon a showing of good cause, the civil fine shall be set aside, but subject to an administrative fee equal to 14 percent of the fine or forfeiture imposed, not to exceed five hundred dollars ($500). Thereafter, the defendant may address the underlying offense de novo. The clerk of the court shall transfer the amounts collected under this subdivision to the county treasurer for deposit in the county treasury. All moneys so deposited shall be transferred as follows: 50 percent of the money to the agency levying or collecting the judgment to be used exclusively for that agency, and 50 percent of that money to a fund in the county treasury and used exclusively to develop, maintain, and operate an automated county warrant

system. The assessment imposed shall be subject to the due process requirements governing defense and collection of civil money judgments generally.

(k) Except in cases in which it is determined that the defendant has insufficient attachable assets, in which case the court may issue a bench warrant, no bench warrant or warrant of arrest shall be issued with respect to the failure to appear at the proceeding for which the judgment is imposed.

(*l*) For counties opting to participate in the pilot project, notwithstanding Section 1463, out of the moneys deposited with the county treasurer pursuant to Section 1463, there shall be transferred once a month an amount equal to the specified percentage of civil assessments collected during the preceding month upon a judgment made pursuant to Section 1214.1, in accordance with the following schedule:

(1) Twenty percent to be transferred to the law enforcement agency that issued the underlying citation, for use of that agency.

(2) Twenty-five percent to be transferred to the agency levying or collecting the judgment, for use of that agency.

(3) Five percent to be transferred to a county fund and used exclusively to develop, maintain, and operate an automated warrant system.

(4) Twenty-five percent to be deposited in the general fund of the county.

(5) Twenty-five percent to be transferred to the judicial district issuing the writ of execution.

(m) If the judgment is for a fine, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally.

(n) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

CHAPTER 1368

An act to amend Section 16112.7 of the Government Code, and to amend Section 33676 of the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 27, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 16112.7 of the Government Code is amended to read:

16112.7. Notwithstanding Sections 16111 and 16112,

redevelopment agencies shall receive state subventions for the 1990–91 fiscal year in accordance with the following procedures:

(a) The Department of Finance shall calculate an amount equal to 25 percent of the total amount all redevelopment agencies would otherwise be entitled to receive in the 1990–91 fiscal year pursuant to paragraph (3) of subdivision (c) of Section 16111.

(b) On or before December 31, 1990, for the 1990–91 fiscal year, the Controller shall allocate the amount calculated pursuant to subdivision (a) to each redevelopment agency in accordance with the percentage entitlement of the total amount that would otherwise be allocated to that agency pursuant to paragraph (3) of subdivision (c) of Section 16111.

(c) The Department of Finance shall calculate an amount equal to 50 percent of the total amount all redevelopment agencies would otherwise be entitled to receive in the 1990–91 fiscal year pursuant to paragraph (3) of subdivision (c) of Section 16111.

(d) On July 1, 1991, the Controller shall allocate the amount calculated pursuant to subdivision (c) to each redevelopment agency in accordance with the percentage entitlement of the total amount that would otherwise be allocated to that agency pursuant to paragraph (3) of subdivision (c) of Section 16111.

(e) Subdivisions (a) to (d), inclusive, shall not apply to any redevelopment agency which has stated in bond instruments and supporting documents that the amounts received pursuant to Section 16111 are pledged as security for payment of the principal and interest of those bonds and that the bond reserve account is insufficient to cover the bond payments. Any redevelopment agency within this subdivision shall, for the 1990–91 fiscal year, instead receive two payments allocated by the Controller, with each payment equal to 50 percent of the amount that would otherwise be allocated to that agency pursuant to paragraph (3) of subdivision (c) of Section 16111. The first payment pursuant to this subdivision shall be made on or before December 31, 1990, and the second payment shall be made on July 1, 1991. No redevelopment agency shall, on or after the effective date of this section, pledge as security for payment of the principal and interest of bonds, the amounts received pursuant to Section 16111.

(f) Notwithstanding the prohibition contained in subdivision (e), relating to the pledge of amounts received pursuant to Section 16111 as security for the payment of bonds, a redevelopment agency within a city with a population of less than 20,000 which receives amounts pursuant to Section 16111 in the 1990–91 fiscal year in excess of one million five hundred thousand dollars ($1,500,000) but less than two million five hundred thousand dollars ($2,500,000), may pledge amounts received pursuant to Section 16111, which amounts shall not be less than the amounts received in the 1984–85 fiscal year, as security for the payment of the principal and interest on bonds issued prior to January 1, 1992.

SEC. 2. Section 33676 of the Health and Safety Code is amended

to read:

33676. (a) Prior to the adoption by the legislative body of a redevelopment plan providing for tax-increment financing pursuant to Section 33670, and unless an agreement is entered into or payments are otherwise distributed by the agency in accordance with Section 33401, any affected taxing agency may elect, and every school and community college district shall elect, to be allocated, in addition to the portion of taxes allocated to the affected taxing agency pursuant to subdivision (a) of Section 33670, all or any portion of the tax revenues allocated to the agency pursuant to subdivision (b) of Section 33670 attributable to one or more of the following:

(1) Increases in the rate of tax imposed for the benefit of the taxing agency which levy occurs after the tax year in which the ordinance adopting the redevelopment plan becomes effective.

(2) Increases in the assessed value of the taxable property in the redevelopment project area, as the assessed value is established by the assessment roll last equalized prior to the effective date of the ordinance adopting the redevelopment plan pursuant to subdivision (a) of Section 33670, which are, or otherwise would be, calculated annually pursuant to subdivision (f) of Section 110.1 of the Revenue and Taxation Code.

(3) If an agency pursuant to Section 33354.5 amends a redevelopment plan which does not utilize tax increment financing to add tax increment financing, and pursuant to subdivision (a) of Section 33670 uses the assessment roll last equalized prior to the effective date of the ordinance originally adopting the redevelopment plan, an affected taxing agency may elect to be allocated all or any portion of the tax revenues allocated to the agency pursuant to subdivision (b) of Section 33670 which the affected taxing agency would receive if the agency were to use the assessment roll last equalized prior to the effective date of the ordinance amending the redevelopment plan to add tax increment financing.

(b) The governing body of any affected taxing agency electing to receive allocation of taxes pursuant to this section in addition to taxes allocated to it pursuant to subdivision (a) of Section 33670 shall adopt a resolution to that effect and transmit the same, prior to the adoption of the redevelopment plan, to (1) the legislative body, (2) the agency, and (3) the official or officials performing the functions of levying and collecting taxes for the affected taxing agency. Upon receipt by the official or officials of the resolution, allocation of taxes pursuant to this section to the affected taxing agency which has elected to receive the allocation pursuant to this section by the adoption of the resolution shall be made at the time or times allocations are made pursuant to subdivision (a) of Section 33670.

(c) An affected taxing agency, at any time after the adoption of the resolution, may elect not to receive all or any portion of the additional allocation of taxes pursuant to this section by rescinding the resolution or by amending the same, as the case may be, and

giving notice thereof to the legislative body, the agency, and the official or officials performing the functions of levying and collecting taxes for the affected taxing agency. After receipt of a notice by the official or officials that an affected taxing agency has elected not to receive all or a portion of the additional allocation of taxes by recission or amendment of the resolution, any allocation of taxes to the affected taxing agency required to be made pursuant to this section shall not thereafter be made but shall be allocated to the agency and the affected taxing agency shall thereafter be allocated only the portion of taxes provided for in subdivision (a) of Section 33670. After receipt of a notice by the official or officials that an affected taxing agency has elected to receive additional tax revenues attributable to only a portion of the increases in the rate of tax, only that portion of the tax revenues shall thereafter be allocated to the affected taxing agency in addition to the portion of taxes allocated pursuant to subdivision (a) of Section 33670, and the remaining portion thereof shall be allocated to the agency.

(d) As used in this section, "affected taxing agency" means and includes every public agency for the benefit of which a tax is levied upon property in the project area, whether levied by the public agency or on its behalf by another public agency.

(e) This section shall apply only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) of Chapter 4 on or after January 1, 1977.

SEC. 3. For purposes of subdivision (e) of Section 16112.7 of the Government Code, the redevelopment agencies of the Cities of Chula Vista, Compton, and South Gate shall be deemed to meet the criteria for the exemption and, therefore, the reductions required pursuant to subdivisions (a), (b), (c), and (d) of Section 16112.7 shall not apply.

SEC. 4. The Redevelopment Agency of the City of Los Angeles shall not exercise the power of eminent domain over residential property within any area added, after the effective date of this act, to the existing Watts Redevelopment Project Area. This prohibition includes, but is not limited to, any amendment to the Watts Redevelopment Project Area plan, administrative or ministerial action relating to, or taking place within, any expanded or proposed to be expanded Watts Redevelopment Project Area.

Where the authority of eminent domain is to be used in areas zoned for nonresidential use, each residential property shall be identified separately in the plan prior to its adoption by a two-thirds vote of the city council. Owners and residents of residential property shall be notified in writing at least 30 days before the redevelopment plan is submitted to the city council for approval, of the possible loss of their residence or property through the future exercise of eminent domain authority and an explanation of how to register any objection to the plan to the city council.

Existing businesses that may be displaced due to redevelopment

shall receive first priority in receiving (a) technical assistance to qualify for eligibility, if applicable, in an enterprise zone, as defined by subdivision (b) of Section 7072 of the Government Code, and in an employment and economic incentive program as provided in Chapter 12.9 (commencing with Section 7080) of Division 7 of Title 1 of the Government Code, (b) loans and other forms of financial assistance available through the Los Angeles Community Redevelopment Agency, and (c) relocation in the same location or a different location in the project area.

Existing tenants, and all future tenants, shall be entitled to all benefits under existing relocation law. For the purpose of establishing tenant eligibility all tenants shall be eligible who have established residency at the time the city council adopts the final resolution approving the eminent domain action and eviction of tenants on the specific residential property.

SEC. 5. Due to the high cost of housing within the County of Los Angeles, lower income homeowners whose property may be taken by eminent domain may not receive sufficient compensation to purchase replacement housing. Therefore, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Special legislation is, therefore, necessary, applicable to only Los Angeles County.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address serious problems regarding the operations and funding of redevelopment agencies, it is necessary that this act take immediate effect.

CHAPTER 1369

An act to add Sections 746, 747, and 747.5 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares the following:

(a) The maintenance and expansion of existing utility conservation programs, and the adoption of new conservation programs, could contribute significantly to the successful implementation of a long-term, least-cost energy plan for the citizens of California.

(b) To promote additional energy conservation measures, the Public Utilities Commission should provide an opportunity for conservation to compete on a fair and reasonable basis with generating resources to fulfill future utility resource needs.

(c) To promote additional utility financed conservation programs, the Public Utilities Commission should establish a pilot program to provide incentives for utilities to invest in conservation programs.

SEC. 2. Section 746 is added to the Public Utilities Code, to read:

746. (a) On or before June 30, 1991, the commission, in consultation with the State Energy Resources Conservation and Development Commission, shall, to the extent feasible, adopt and implement a pilot program of incentives to encourage utilities to maintain and expand their energy efficiency programs and load management programs that promote energy efficiency.

(b) The commission's incentives program shall require utilities to achieve reasonable minimum performance requirements as a condition for receiving incentive benefits, and shall hold utilities accountable for not achieving reasonable minimum performance requirements through loss of incentive benefits and the imposition of penalties.

(c) The commission shall, to the extent feasible, require that incentives are based on the participation levels and energy savings from utility energy efficiency programs and load management programs that promote energy efficiency.

(d) The commission shall, as soon as practicable, report to the Legislature on the results of its pilot program of incentives. The report shall indicate whether incentives are preferable to a regulatory scheme which mandates utility energy efficiency programs and load management programs that promote energy efficiency.

SEC. 3. Section 747 is added to the Public Utilities Code, to read:

747. (a) In addition to the incentives program required by Section 746, the commission shall require one or more electric utilities to implement pilot projects to accomplish the following:

(1) On or before June 30, 1991, begin to test separately from any generation resource bidding system the ability of demand side bidding to deliver benefits to utility customers.

(2) At the earliest practicable time, test the feasibility of an integrated bidding system that includes both generation resources and demand side programs.

(b) The commission shall establish a pilot program for gas utilities which tests a program of competitive bidding auctions for demand side services which deliver benefits to utility customers. However, a pilot program shall not apply to customer classes for which the gas utility is at risk for loss of sales or revenues due to the lack of a sales adjustment mechanism.

(c) On or before January 1, 1993, the commission, in consultation with the State Energy Resources Conservation and Development Commission, shall report the results of the pilot projects required by

subdivisions (a) and (b) to the Legislature. The report shall assess the feasibility and implications of implementing the tested bidding systems and shall include recommendations on whether or not the state should adopt either, or both, of the following:

(1) An integrated bidding system that allows demand side services to compete with generation resources to fulfill future electric utility resource needs, or a program of separate bidding auctions for demand side services which deliver benefits to electric utility customers.

(2) A program of separate bidding auctions for demand side services which deliver benefits to natural gas utility customers.

SEC. 4. Section 747.5 is added to the Public Utilities Code, to read:

747.5. The commission shall review its policies concerning pricing of utility service and shall assess whether the pricing policies promote the pursuit of energy efficiency by customers, and shall report its assessment to the Legislature as soon as practicable.

CHAPTER 1370

An act to add Chapter 1 (commencing with Section 16000) to Part 4 of Division 9 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Chapter 1 (commencing with Section 16000) is added to Part 4 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 1. FOSTER CARE PLACEMENT

16000. It is the intent of the Legislature to preserve and strengthen a minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. When the minor is removed from his or her own family, it is the purpose of this chapter to secure as nearly as possible for the minor the custody, care, and discipline equivalent to that which should have been given to the minor by his or her parents. Family reunification services shall be provided for expeditious reunification of the minor with his or her family, as required by law. If reunification is not possible or likely, a permanent alternative shall be developed.

16010. (a) When a minor is placed in foster care, to the extent available and accessible, the case plan for each minor shall include

the health and education records of the minor. The records shall include, but not be limited to, the names and addresses of the minor's health and education providers, the minor's grade level performance, the minor's school record, assurances that the minor's placement in foster care takes into account proximity to the school in which the minor is enrolled at the time of placement, a record of the minor's immunizations, the minor's known medical problems, the minor's medications, and any other relevant health and educational information concerning the minor determined to be appropriate by the director.

(b) A minor's health and education record shall be reviewed and updated, and supplied to the foster parent or foster care provider with whom the minor is placed, at the time of each placement of the minor in foster care.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1371

An act relating to parks and recreation, and making an appropriation therefor.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. The sum of one million two hundred sixty-two thousand dollars ($1,262,000) is hereby appropriated from the State Parks and Recreation Fund, from proceeds derived from the transfer of approximately 16.7 acres of land, commonly known as the Las Cruces site in Gaviota State Park, which is authorized by Section 35 of Chapter 1256 of the Statutes of 1989, to the Department of Parks and Recreation for the cooperative acquisition of real property adjoining or in the vicinity of the La Purisima Mission State Historical Park.

CHAPTER 1372

An act to amend Sections 40, 41, 52, 92, 262.3, 1043, 1240, 1245, 1246, 1250, 1252, 1253, 1260, 1262, 1271, 1294, 1297, 1298, 1330, 1340, 1400, 1500, 1510, 1602, 1606, 1700, 1721, 1831, 1946, 4002, 4003, 7000, 8006, 8008, 8070, 8080, 8081, 8084, 8092, 8207, 8225, 8285.5, 8320, 8322, 8328, 8329, 8362, 8394, 8510, 8534, 8760, 8761, 8762, 8763, 8764, 8765, 8771, 10407, 10504, 10900, 10901, 10907, 10910, 10912, 10913, 10914, 11001, 12020, 12220, 12302, 12400, 12401, 12402, 12405, 14000, 15100, 15106, 15140, 15141, 15142, 15147, 15252, 15254, 15502, 15520, 15527, 15528, 15541, 15551, 15570, 15574, 15701, 15718, 15735, 15745, 15752, 15794, 16042, 16045, 16080, 16100, 16105, 16165, 16195, 16197, 16200, 16214, 17302, 17313, 17900, 17901, 17902, 17903, 18100, 18101, 18102, 18103, 18110, 18111, 18120, 18121, 18122, 18131, 18132, 18134, 18137, 18138, 18139, 18170, 18171, 18172, 19901, 22200, 22504, 24806, 24923, 24924, 32033, 32300, 32371, 32372, 33031, 33113, 33117, 33117.5, 35501, 39214.5, 39308, 39383, 39830, 41303, 41332, 44849, 44850, 44854, 51875.7, 52152, 52154, 52302.3, 52342, 52512, 62001, 66010, 66011, 66017, 66021, 66700, 68011, 68012, 68016, 68022, 68023, 68040, 68041, 68051, 68070, 68071, 68072, 68073, 68100, 69510, 69511.5, 69537, 69640, 69641, 69641.5, 69642, 69643, 69648, 69648.5, 69649, 69653, 69655, 71004, 71020, 71040, 71046, 71050, 71090, 71092, 71093, 72000, 72023.5, 72027, 72031, 72102, 72122, 72241, 72247, 72423, 72500, 72506, 72530, 74000, 74001, 74104, 74105, 74106, 74107, 74109, 74110, 74132, 74134, 74135, 74136, 74139, 74140, 74153, 74154, 74155, 74158, 74159, 74202, 74270, 74290, 76000, 76001, 76020, 76403, 76407, 78031, 78032, 78211.5, 78213, 78216, 78217, 78230, 78249, 78300, 78401, 78900, 78907, 79020, 79021, 79154, 79155, 81033, 81130, 81130.5, 81133, 81160, 81177, 81179, 81805, 81807, 81820, 81822, 81836, 81837, 81901, 81908, 81947, 82321, 82537, 82542, 84030, 84040.6, 84207, 84320, 84328, 84362, 84381, 84382, 84383, 84384, 84660, 84890, and 85230 of, to amend and repeal Section 32033 of, to add Sections 8323, 71025, 71028, 72013, 72014, 72015, 72243, 72249, 72253.3, 72253.5, 72253.7, 78034, 84001, 84700.3, 85266.5, 87448, and 88020.5 to, to add Chapter 1.5 (commencing with Section 78100) to Part 48 of, to repeal Sections 91, 265, 1255, 7001, 7002, 8085, 8329.5, 8511, 8513, 8514, 8515, 8516, 12210, 12404, 14020, 14021, 15000, 32200, 44971, 66101, 66102, 66200, 66700.5, 66902.5, 67007, 68010, 68013, 68019, 68020, 68021, 68090, 69644, 69645, 69646, 69647, 69648.7, 69657, 71005, 71027.5, 71033, 71034, 71038, 71039, 71041, 71042, 71047, 71048, 71095, 71096, 71097, 72001, 72002, 72020, 72021, 72023.7, 72024, 72025, 72028, 72029, 72030, 72032, 72033, 72035, 72120, 72125, 72126, 72132, 72200, 72202, 72203, 72204, 72208, 72231, 72237, 72241.5, 72244, 72247.1, 72248, 72255, 72256, 72408, 72409, 72412, 72413, 72419, 72419.5, 72420, 72421, 72422, 72531, 72532, 74010, 74011, 74271, 74282, 74283, 74291, 74292, 74293, 74294, 74295, 76001.5, 76002, 76006, 76021, 76142, 76160, 76400, 76405, 76408, 76409, 76470, 78001, 78002, 78003, 78004, 78005, 78006, 78007, 78010, 78011, 78012, 78220, 78221, 78222, 78240, 78241, 78242, 78243, 78244, 78245, 78246, 78247, 78248, 78250, 78270, 78272, 78301, 78302, 78303, 78304, 78305, 78402, 78403, 78405, 78407, 78409, 78412, 78440, 78440.5, 78441,

78442, 78902, 78903, 78904, 78905, 78906, 79022, 79023, 79024, 79025, 79026, 79027, 79027.5, 79028, 79029, 79031, 79032, 79121, 79122, 79123, 79124, 79153, 81000, 81005, 81006, 81008, 81009, 81033.5, 81035, 81036, 81038, 81039, 81131, 81131.5, 81131.6, 81132, 81134, 81135, 81136, 81137, 81140, 81164, 81165, 81176, 81801, 81802, 81803, 81804, 81806, 81809, 81810, 81821.5, 81830, 81831, 81833, 81838, 81900, 81903, 81906, 81910, 81911, 81912, 81913, 81914, 81915, 81916, 81917, 81918, 81919, 81920, 81921, 81922, 81923, 81924, 81931, 81948, 81953, 81954, 81957, 81958, 81959, 81967, 82305, 82305.5, 82321.1, 82360, 82362, 82363, 82364, 82365, 82530, 82531, 82532, 82533, 82535, 82536, 82538, 82539, 82540, 82541, 82543, 84004, 84005, 84031, 84035, 84040.3, 84040.7, 84041, 84043, 84044, 84045, 84046, 84200, 84201, 84206, 84300, 84322, 84324, 84325, 84327, 84329, 84330, 84331, 84332, 84360, 84363, 84380, 84384.1, 84385, 84386, 84387, 84661, 84662, 84735, 84850.5, 84891, 84892, 84893, 84894, 84895, 85210, and 85430 of, to repeal Article 2 (commencing with Section 8020) of Chapter 1 of Part 6 of, Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of, Article 3 (commencing with Section 71060) of Chapter 1 of Part 44 of, Article 3 (commencing with Section 72280) of, and Article 5 (commencing with Section 72320) of Chapter 3 of, Article 1 (commencing with Section 72600) of, Article 4 (commencing with Section 72640) of, and Article 5 (commencing with Section 72650) of, Chapter 6 of Part 45 of, Article 8 (commencing with Section 76130) of Chapter 1 of, Chapter 2 (commencing with Section 76300) of, Article 2 (commencing with Section 76420) of, and Article 4 (commencing with Section 76450) of Chapter 3 of Part 47 of, Article 2.5 (commencing with Section 78040) of, and Article 3 (commencing with Section 78050) of Chapter 1 of, Article 1 (commencing with Section 78200.5) of, and Article 6 (commencing with Section 78280) of Chapter 2 of, Article 2 (commencing with Section 78430) of, and Article 5 (commencing with Section 78460) of Chapter 3 of, Article 2 (commencing with Section 78920) of, and Article 3 (commencing with Section 78930) of Chapter 7 of, Article 1 (commencing with Section 79000) of, and Article 2 (commencing with Section 79010) of Chapter 8 of Part 48 of, Article 1 (commencing with Section 82500) of Chapter 8 of Part 49 of, Article 3 (commencing with Section 84050) of Chapter 1 of, Article 6 (commencing with Section 84370) of, and Article 8 (commencing with Section 84390) of Chapter 3 of, Article 5 (commencing with Section 84801) of Chapter 5 of, Article 1 (commencing with Section 85200) of Chapter 8 of, Article 1 (commencing with Section 85400) of Chapter 9 of, and Article 3 (commencing with Section 85420) of Chapter 9 of Part 50, to repeal Chapter 5.5 (commencing with Section 84900) of, Chapter 6 (commencing with Section 85000) of, and, Chapter 7 (commencing with Section 85100) of Part 50, to repeal and add Section 84040 of, and to repeal and add Chapter 4 (commencing with Section 84500) of Part 50 of, the Education Code, to amend Section 16417 of the Government Code, and to add Section 20660 to the Public Contract Code, relating to community colleges.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby finds and declares that numerous provisions of the Education Code, including those provisions listed in subdivision (b), authorizing community colleges to conduct various activities are unnecessary in light of Section 14 of Article IX of the California Constitution. Section 14 of Article IX of the California Constitution authorizes community college districts to initiate and carry out any activity which is not in conflict with, or inconsistent with, or preempted by any law, and which is not in conflict with the purposes for which community college districts are established.

(b) The Legislature finds and declares that the purpose of this act is to repeal or make inapplicable to the community colleges numerous Education Code provisions which are no longer necessary in light of the authority of Section 14 of Article IX of the Constitution. In repealing or making inapplicable these provisions, the Legislature finds and declares that under the general authority of Section 14 of Article IX, community college districts shall continue to have the authority provided in the provisions that are repealed. The Legislature specifically declares this finding with regard to, but not limited to, the following Education Code sections which are repealed or amended by this act:

Sections 8080, 8081, 8084, 8085, 8091, 8322, 8329, 8760, 8761, 8762, 8763, 8764, 10504, 12400, 12401, 12402, 12404, 12405, 18110, 18111, 18120, 18131, 18134, 32371, 32372, 72241.5, 72244, 72320, 72321, 72412, 72419, 72419.5, 72420, 72421, 72422, 76400, 76470, 78001, 78010, 78011, 78050, 78051, 78208, 78230, 78240, 78270, 78280, 78281, 78286, 78302, 78303, 78409, 78440, 79022, 79028, 79032, 79121, 81009, 81839, 81931, 81953, 81954, 81957, 82305, 82305.5, 82500, 82501, 82535, 82541, 84035, 84050, 85201, 85260.5, 85266, 85267, 85410, 85420, and 85430, the second sentence of Section 32033, the second and third sentences of Section 76403, the first sentence of Section 78442, and the second and third sentences of Section 84041.

SEC. 3. Section 40 of the Education Code is amended to read:

40. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses be conducted, without regard to the sex of the student enrolled in such classes and courses.

(b) No school district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student, except a class subject to Section 51550.

(c) No school district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or

aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for the seventh grade so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

SEC. 4. Section 41 of the Education Code is amended to read:

41. (a) The Legislature finds and declares that female students are not accorded opportunities for participation in school-sponsored athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female students.

(b) Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(c) Nothing in this section shall be construed to require a school district to require competition between male and female students in school-sponsored athletic programs.

SEC. 5. Section 52 of the Education Code is amended to read:

52. The secondary schools of the state are designated as high schools, technical schools, and adult schools.

SEC. 6. Section 91 of the Education Code is repealed.

SEC. 7. Section 92 of the Education Code is amended to read:

92. "County" or "counties" as used in Sections 2300, 12300 to 12307, inclusive, 41000 to 41964, inclusive, 42100 to 42128, inclusive, 46000 to 46392, inclusive, 84000 to 84850.5, inclusive, and 85000 to 85430, inclusive, whichever are in effect, includes a city and county.

SEC. 9. Section 262.3 of the Education Code is amended to read:

262.3. (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, the president of a campus of the California State University,

or the chancellor of a campus of the University of California, pursuant to this article, to the State Department of Education, the Board of Governors of the California Community Colleges, the Chancellor of the California State University, or the President of the University of California, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other orders may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

SEC. 10. Section 265 of the Education Code is repealed.

SEC. 11. Section 1043 of the Education Code is amended to read:

1043. Upon the adoption of a resolution by the board of supervisors of the county consenting to the transfer of the functions specified in this section, the functions specified in this section shall be transferred from the county board of supervisors to the county board of education. The functions, including, but not limited to, the receipt of petition and reports and other papers, are those specified in Sections 35001, 35002, 35676, 35698, 35699, 35703, 35704, 35705, 35722, 35723, 35724, 74100, 74104, 74131, 74132, 74134, 74151, 74153, 74156, 74250, 74251, and 74295.

Upon the adoption of the resolution, any reference, with respect to that county, in those sections to the board of supervisors shall be deemed to be a reference to the county board of education of that county and any reference to the clerk of the county board of supervisors shall be deemed to be a reference to the secretary of the county board of education of that county.

SEC. 12. Section 1240 of the Education Code, as amended by Chapter 1462 of the Statutes of 1988, is amended to read:

1240. The superintendent of schools of each county shall:

(a) Superintend the schools of his or her county.

(b) Visit and examine each school in his or her county at reasonable intervals to observe their operation and to learn of their problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(c) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(d) Keep in his or her office the reports of the Superintendent of Public Instruction.

(e) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(f) Enforce the course of study.

(g) Enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority.

(h) Preserve carefully all reports of school officers and teachers.

(i) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the State Department of Education.

(j) Submit two reports during the fiscal year to the county board of education. The first report shall cover the financial and budgetary status of the county office of education for the period ending no earlier than October 31 nor later than December 31. The second report shall cover the period ending March 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent no later than 45 days after the close of the period being reported. As part of each report, the superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year. The certifications shall be classified as positive, qualified, or negative, as prescribed by the Superintendent of Public Instruction, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. Copies of each certification in which the superintendent is unable to certify unqualifiedly that these financial obligations will be met and the report containing that certification shall be sent to the Controller and the Superintendent of Public Instruction at the time it is submitted to the county board of education.

All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability developed pursuant to Section 33127.

This subdivision does not preclude the submission of additional budgetary or financial reports by the superintendent to the county board of education or to the Superintendent of Public Instruction.

(k) When so requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(*l*) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 13. Section 1245 of the Education Code is amended to read:

1245. Each county superintendent of schools shall submit the reports as may from time to time be required by the Superintendent of Public Instruction. It shall be the duty of each school district to furnish to the county superintendent of schools any records, reports,

documents, maps or other data pertaining to reports required by the Superintendent of Public Instruction.

SEC. 14. Section 1246 of the Education Code is amended to read:

1246. Whenever the destruction of records of a county superintendent of schools is not otherwise authorized or provided for by law, the county superintendent of schools may destroy the records of his or her office in accordance with regulations of the Superintendent of Public Instruction which he or she is herewith authorized to adopt.

SEC. 15. Section 1250 of the Education Code is amended to read:

1250. The county superintendent of schools, with the approval of the county board of education, may enter into an agreement with the governing board of any school district or community college district in the territory under his or her jurisdiction, to provide for the use by the district of audiovisual equipment and apparatus. The county superintendent of schools is authorized to acquire by purchase, lease, or any other means the equipment and apparatus necessary to provide the service, and to establish facilities for maintaining and servicing that equipment, and for its distribution to school districts and community college districts. The title to all equipment and apparatus acquired by the county superintendent of schools under this section shall be vested in the office of the county superintendent of schools.

The agreement shall, among other matters, provide for the amount of the payment to be made by the districts to the county superintendent of schools, and the time the payments shall be made. The payments made by all districts that have entered into an agreement with the county superintendent of schools under this section shall not exceed the costs of rendering the service. The costs may include any expense necessary to carry out this section.

The governing board of a school district or a community college district may withdraw from an agreement by giving notice six months prior to the beginning of the next fiscal year, and the agreement shall terminate on the last day of the then current fiscal year. The terms of an agreement may be changed by mutual consent at any time.

The county superintendent of schools shall transfer the amounts agreed upon, at the time or times agreed upon, from the general fund of the district to the special equipment and apparatus fund of the county superintendent of schools, which fund is hereby authorized. All funds received for the purposes of this section shall be deposited in said fund, and all expenditures made for the purposes of this section shall be made from the fund.

SEC. 16. Section 1252 of the Education Code is amended to read:

1252. The county superintendent of schools of any county may, with the approval of the State Compensation Insurance Fund, insure the liability for compensation of any school districts and community college districts in the territory under his or her jurisdiction, the governing boards of which consent thereto, with the State

Compensation Insurance Fund under one policy or contract of insurance and pay the premium for the insurance from the county school service fund. Immediately following the payment of the final premium the county superintendent of schools shall transfer from the funds of each insured district to the county school service fund an amount which bears the same ratio to the premium as the payroll of each district bears to the total payroll of all the insured districts.

Any dividends earned on the premiums paid under this section shall be credited to the individual districts in proportion to the amount of the premium charged to each district.

The expenses of the county superintendent of schools incurred under this section shall be charged to and paid from the county school service fund, which fund shall be reimbursed for those expenses from the general funds of the school districts and community college districts on whose behalf the expenditures are incurred.

SEC. 17. Section 1253 of the Education Code is amended to read:

1253. (a) Whenever any school district or community college district is situated partly within two or more counties, jurisdiction over it is, unless otherwise provided in this code, in the county superintendent of schools of the county in which the schoolhouse of the district is located, or, if there be a schoolhouse of the district in each of two or more counties, jurisdiction over the district is in the county superintendent of schools of the county in which the greatest area of the district lies.

(b) Jurisdiction once established pursuant to subdivision (a) over a school district or community college district situated in two or more counties, shall not be changed, regardless of changes in the schoolhouse maintained by the district in the several counties or changes in the areas of the several counties included within the district, except by a majority of the votes cast by the electors within the district on the proposition for change of such jurisdiction submitted at election.

(c) "Jurisdiction," with respect to community college districts for the purposes of this section, means the responsibility or authority to provide services to community college districts.

SEC. 18. Section 1255 of the Education Code is repealed.

SEC. 19. Section 1260 of the Education Code is amended to read:

1260. The county superintendent of schools, with the approval of the county board of education, may:

(a) Conduct studies through research and investigation as are determined by the county board to be required in connection with the future management, conditions, needs, and financial support of the schools within the county; or join with one or more school district or community college district governing boards in the conduct of the studies.

(b) Install and maintain exhibits of educational programs and activities of the school districts and community college districts within the county at any county fair or at any agricultural district fair.

(c) Inform and make known to the citizens of the county, the educational programs and activities of the school districts or community college districts in the territory within his or her jurisdiction.

(d) Subscribe for membership in any society, association, or organization which has for its purpose the promotion and advancement of public or private education, subject to the same restrictions as are imposed by Section 35173 on governing boards of school districts respecting those subscriptions.

(e) Provide in-service programs and coordinative services for any school or community college district governing board or governing board association in the territory under the jurisdiction of the county superintendent of schools.

SEC. 20. Section 1262 of the Education Code is amended to read:

1262. Each county superintendent of schools is authorized upon request to provide consultative or coordinative services for school districts and community college districts in the territory under his or her jurisdiction which have established educational programs that are designed to meet the requirements of federal law for the receipt of federal funds for the support of the programs, and that are supported in whole or in part by federal funds. The services may be financed by the federal funds as may be provided.

SEC. 21. Section 1271 of the Education Code is amended to read:

1271. The county superintendent of schools may, with the approval of the county board of education, hold one trustees' meeting in each year as follows:

(a) One school trustee of each school district of the county shall attend the meeting and participate in its proceedings but more than one trustee of any district may attend if the board of trustees of that district so directs.

(b) School trustees of each school district shall select the trustee or trustees who shall attend the meeting.

(c) Each trustee selected to attend the meeting shall be allowed his or her actual traveling expenses for not to exceed one day incurred in going to and returning from the meeting. The expenses shall be verified by the county superintendent of schools.

(d) The county superintendent shall notify each trustee of the county at least 10 days prior to calling of the trustees' meeting of the time and place of the meeting.

(e) Each session of the trustees' meeting may be called at any hour on the day specified and may continue for that time as those meeting see fit.

(f) The county superintendent shall draw his or her requisition on the county auditor who shall draw his or her warrant on the county school service fund to pay the expenses of holding the trustees' meeting.

SEC. 22. Section 1294 of the Education Code is amended to read:

1294. Each person employed by a county superintendent of schools in a position requiring certification qualifications, except

employees included in the civil service system or in any merit system, or any person who holds an office by virtue of an election conducted under the Elections Code or the Education Code, and whose salary is paid from the county school service fund, has the same right with respect to leaves of absence, sick leave, and bereavement leave as a person employed by a school district or a community college district in a position requiring certification qualifications.

Sections 22724, 44845, 44922, 44949, 44955, 44962 to 44976, inclusive, 44977, 44978, 44979, 44983, 44984, 44985, 44987, 87413, 87414, 87740, 87743, 87763 to 87779, inclusive, 87780, 87781, 87782, 87786, 87787, and 87788 apply to persons so employed by a county superintendent of schools and so paid from the county school service fund. Whenever, in those provisions, a duty or power is imposed upon or granted to the governing board of a school district or community college district or an employee thereof, the power or duty shall, for the purposes of this section, be deemed to be granted to or imposed on the county superintendent of schools or his or her employee, respectively. When "district" is used in those provisions, it shall, for the purposes of this section, be deemed to mean "county superintendent of schools." Compensation paid to employees during those leaves shall be paid from the county school service fund.

The granting of leaves of absence to employees pursuant to Section 44966 or 87767 shall be by the county superintendent of schools, upon approval by the county board of education.

SEC. 23. Section 1297 of the Education Code is amended to read:

1297. For the purpose of insurance under the workers' compensation laws of this state, any person employed by a county superintendent of schools to supervise instruction or to give instruction in the school districts or community college districts located in the territory under the jurisdiction of the county superintendent of schools shall be deemed an employee of the county. The cost of insuring any person employed to supervise instruction shall be paid by the county superintendent of schools from the county school service fund. The cost of insuring any person employed by the county superintendent of schools to give instruction shall be paid by the county superintendent of schools from the county school service fund.

SEC. 24. Section 1298 of the Education Code is amended to read:

1298. By agreement between the county board of education and county board of supervisors, in counties in which the provisions of Article 4 (commencing with Section 1310) have become operative and in which functions and duties have been transferred from the county board of supervisors to the county board of education in accordance with Sections 1043 and 1080, the county superintendent of schools may be authorized to employ an administrative adviser as part of the classified service. His or her compensation shall be as fixed by the county board of education, and shall be paid from that part of the single budget prepared by the county board of education for

which a county tax is levied pursuant to Section 1623. His or her duties shall be the administrative duties established by the county board of education, and to counsel with and act as a coordinator between, the district attorney or county counsel, the county board of education, the county committee on school district organization, the personnel commission, the county superintendent of schools, school districts, and community college districts which request his or her services. The district attorney or county counsel shall continue to have and to discharge all of the authority and duties imposed upon him or her by law in the schools and education fields; however, the administrative adviser may be deputized by the district attorney or county counsel, in his or her discretion, if the adviser is admitted to practice law in this state.

SEC. 25. Section 1330 of the Education Code is amended to read:

1330. (a) The Superintendent of Public Instruction or the Board of Governors of the California Community Colleges, as appropriate, shall represent, and exercise rights of appeal to the Unemployment Insurance Appeals Board under this part on behalf of school employers held under Section 1336 of the Unemployment Insurance Code.

(b) The Superintendent of Public Instruction or Board of Governors of the California Community Colleges is hereby authorized to obtain pertinent personnel records and data from any school employer and to act as an agent individually or collectively for school employers in matters pertaining to unemployment insurance.

(c) Each county superintendent of schools shall have the responsibility of establishing, coordinating, and maintaining, either directly or by contract, an unemployment insurance management system for each school employer participating in the School Employees Fund under Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1 of the Unemployment Insurance Code. A management system shall include general administration, claims management, appointment of hearing representatives, representation of school employers at hearings, and other duties related to the unemployment insurance program in their jurisdiction. These duties and responsibilities may be delegated to any school district, community college district, another county superintendent of schools, or any combination of these entities, including programs under joint powers agreements for the purpose of consolidation for economy and employment of specialists, including the services of a regional data center operated by a county superintendent of schools or the data-processing services of a school district or a community college district. School employers not participating in the School Employees Fund shall be responsible for the development and maintenance of their own unemployment insurance management system required by this subdivision.

(d) Each school employer shall perform pursuant to the type of financing elected, and shall, as required, respond to the Superintendent of Public Instruction or Board of Governors of the

California Community Colleges and the county superintendent of schools or designated agency as soon as possible, in no case later than 48 hours, to inquiries made on behalf of the county superintendent or the Superintendent of Public Instruction or Board of Governors of the California Community Colleges in reference to any aspect of eligibility, notice of claim or appeal under the unemployment insurance program. Each county superintendent or agent thereof who is responsible for administering the unemployment insurance program shall be responsible for timely responses to any inquiry by the administrator, Superintendent of Public Instruction, State Treasurer, Controller, or other officer or person responsible for disbursements from the School Employees Fund in the State Treasury as established by Section 822 of the Unemployment Insurance Code, or the Unemployment Fund in the State Treasury. Any school employer which fails to pay the contributions, interest, charges or levies within the time required shall be liable for interest on moneys due at the rate of 1 percent per month or fraction thereof from and after the date of delinquency until paid. If the school employer fails, without good cause, to pay any sums required within the time required, a penalty of 10 percent of the amount noticed, billed or required shall be made by the administrator. The administrator may for good cause waive all or a portion of interest and penalty.

(e) The administrator of the School Employees Fund shall, from available interest earnings, pursuant to investments authorized by Section 822 of the Unemployment Insurance Code, transfer each year an amount equal to two dollars ($2) per covered employee for all districts participating in the School Employees Fund under Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1 of the Unemployment Insurance Code, to the Superintendent of Public Instruction or the Board of Governors of the California Community Colleges, as appropriate. The Superintendent of Public Instruction or the Board of Governors of the California Community Colleges, as appropriate, shall apportion the two dollars ($2) per covered employee amount, less actual state administrative costs not to exceed five cents ($0.05) per covered employee, to the county superintendent of schools to cover costs of administering the unemployment insurance management system specified in subdivision (c).

(f) For the fiscal year 1978–79, and each fiscal year thereafter, the administrator of the School Employees Fund shall transfer the funds by December 31 of each year based on the reports received from the Superintendent of Public Instruction or Board of Governors of the California Community Colleges by November 30 of each year. The reports shall be compiled from the number of covered employees as reported by the county superintendent of schools or community colleges, as appropriate, to the Superintendent of Public Instruction or the Board of Governors of the California Community Colleges by November 1 of each year, based on the covered employees employed

in the preceding calendar month. The funds shall be apportioned by the Superintendent of Public Instruction and the Board of Governors of the California Community Colleges prior to January 31 of each year to the county superintendent of schools, less the actual administrative costs of the Superintendent of Public Instruction or the Board of Governors of the California Community Colleges, which shall not exceed an aggregate amount of five cents ($0.05) per covered employee. Funds for the cost of administering the unemployment insurance management system shall be apportioned to each county superintendent of schools according to the number of covered employees in each district reported by him or her, and shall be used only for the purpose of covering actual administrative costs incurred pursuant to Section 1330.

SEC. 26. Section 1340 of the Education Code is amended to read:

1340. Notwithstanding any other provision of law to the contrary, the following procedure may be utilized for payroll-related payments as limited in this section. The county superintendent of schools may designate one or more national or state banks or a savings and loan association having its principal office in this state, if its deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, to act as disbursing agents for the county superintendent of schools and for school districts and community colleges in the territory under his or her jurisdiction. The county superintendent of schools may draw orders and requisitions upon the funds of the respective public employers, in favor of the designated institutions, for tax-sheltered annuities, custodial accounts, individual retirement accounts, credit union deductions, insurance plan payments, deferred compensation, withholding taxes, professional dues, and other payroll-related deductions or employer contributions. The county auditor shall follow the procedure with respect to examining and allowing the orders and requisitions set forth in Sections 42639 and 85239. The county superintendent of schools, upon receiving allowed warrants from the county auditor, shall deposit the warrants in the designated institutions. As soon as feasible following deposit, the county superintendent of schools shall furnish the designated institutions with information required to enable disbursement of payments to insurance companies, credit unions, and other recipients, including identification of the employees for whom the payments are to be made, the amount of payment on behalf of each designated employee, and the company to which the payment on behalf of each designated employee is to be made. It shall be the duty of each designated institution to disburse the payments to the recipients entitled thereto by check, bank draft, or other appropriate method, within a reasonable time after receipt of each payment, with necessary information for disbursements, which time period shall not exceed 5 working days. Designated institutions receiving deposits and making disbursements, and the county superintendent of schools, shall be deemed to be agents of the respective public

employers, for payment of annuities on behalf of their respective employees, and for other payments as specified, and the moneys received by the banks shall be deemed to be deposits of the county superintendents of schools. Security for the deposits shall be furnished as required by the laws of this state. The county superintendent of schools may directly prepare the information and necessary checks, bank drafts, or other appropriate instruments, on the account or accounts within the designated institutions, providing that payment to recipients entitled thereto with required information is made within the time frame specified.

SEC. 27. Section 1400 of the Education Code is amended to read:

1400. Except as provided in Sections 4040 to 4045, inclusive, all actions required by this code to be taken by the board of supervisors of the county in which a school district is located, shall, in the case of any joint school district, be taken by the concurrent action of the boards of supervisors of each county in which any part of the joint district is located.

SEC. 28. Section 1500 of the Education Code is amended to read:

1500. All expenses shall be paid out of the County School Service Fund necessary for the county board of education and the county superintendent of schools to perform the duties and render the services required by and comply with Sections 1042, 1250, 1252, 1270, 1297, 1299, 1330, 1601, 1602, 1702, 41020, 41360, 42621, 42622, 45035, 45056, 56720, 60601, 60602, 60605, 84040, 85221, 85222, 87809, and Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code.

This section shall not be construed to prohibit support from the county general fund from being provided for duties and services performed pursuant to the sections and part enumerated above.

SEC. 29. Section 1510 of the Education Code is amended to read:

1510. Except as provided in Section 1500, all expenses necessary for the county board of education, the county committee on school district organization, and the county superintendent of schools to comply with the following provisions are payable from the county general fund: 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1200, 1201, 1202, 1203, 1240, 1243, 1244, 1245, 1290, 1298, 2600, 5425, 5426, 10020, 16061, 16166, 22800.5, 23000, 23002, 23003, 23004, 23005, 23006, 23008, 35102, 40000, 42124, 42636, 42638, 42643, 42662, 42670, 42671, 42672, 42673, 42674, 42675, 42676, 42677, 42678, 42690, 42691, 42692, 42693, 42694, 42800, 44323, 44422, 44427, 44428, 44429, 44430, 44433, 44434, 44435, 44436, 44437, 44816, 44843, 44857, 45034, 45056, 45057, 48263, 49406, 52550, 52551, 85236, 85238, 85243, 85272, 85280, 85281, 85282, 85283, 85284, 85285, 85286, 85287, 85288, 85300, 85301, 85302, 85303, 85304, 85400, and 87808.

This section shall not be construed to prohibit support from the county general fund from being provided for duties and services performed pursuant to sections enumerated above for those counties operating under the provisions of Section 1080.

SEC. 30. Section 1602 of the Education Code is amended to read:

1602. The county school service fund shall be utilized by the county superintendent of schools to pay the charges against the fund as are provided in this code; and to provide, with the approval of the county board of education, all of the following:

(a) Additional apportionments to any school district or community college district in the territory under his or her jurisdiction for current expenses that (1) has levied the maximum district tax and in which the annual average current cost per pupil does not exceed the annual average current cost per pupil for all districts of the same type within the county or under the jurisdiction of the county superintendent of schools, or (2) needs additional apportionments for current expenses because of temporary emergency conditions.

(b) Additional apportionments to any school district or community college district in the territory under his or her jurisdiction for the transportation of pupils to and from school to meet temporary emergency conditions.

SEC. 31. Section 1606 of the Education Code is amended to read:

1606. The money credited to the county school service fund of a county pursuant to Section 16417 of the Government Code may be apportioned by the county superintendent of schools, with the approval of the county board of education, to school districts within which there is land which has been acquired by the United States.

SEC. 32. Section 1700 of the Education Code is amended to read:

1700. The Legislature hereby declares that it is in the interest of the state and of the people for the office of the county superintendent of schools, through the county school service fund, to provide coordination of the educational program among school districts and community college districts in the territory under his or her jurisdiction and to provide professional and financial assistance to school districts and community college districts which otherwise, because of size or location, would not be able to furnish a satisfactory program of education for their children. That assistance is a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.

In adopting this chapter, the Legislature considers that the coordination of the educational program constitutes the greatest continuing need to be met through the county school service fund. To meet this need the necessity is recognized to provide professional services to coordinate courses of study, guidance services, health services, school library services, special education, and attendance activities.

As an additional need, the Legislature recognizes the necessity to provide professional services in districts too small to supply services for themselves economically and effectively, such as, (a) to prepare courses of study; (b) to supervise instructional practices; (c) to provide direct guidance services, health services, and attendance services normally provided in an educational program; (d) to provide for the purchase, distribution, and use of supplementary

instructional materials and equipment; and (e) to provide educational opportunity to normal and special pupils who would otherwise be denied it. It is recognized further that providing for professional service is a transitory function of the county school service fund to be assumed by school districts and community college districts when, through growth or reorganization, they will be able to perform the services for themselves.

It is the further intent of the Legislature that:

(a) Services involving the coordination of the educational program which have among others the purposes of (1) enforcing minimum standards, (2) improving the educational program, and (3) promoting order and reasonable uniformity in the educational program shall be provided, except as may be specifically authorized, at the district level, reserving to the district the opportunity and responsibility for internal improvement, and that those services will be provided in a manner that recognition will be given to the responsibilities placed upon school districts and community college districts, by the Legislature to determine and administer their own educational program.

(b) Services to school districts and community college districts, which do not constitute coordination among districts shall be provided in a manner that impetus will be given to strengthening school districts and community college districts, and to improving district organization to the end that more effective programs of education may be offered, and that the provision of services through the county school service fund shall not act to deter or delay any school districts and community college districts, from furnishing the services for themselves.

(c) Services to school districts and community college districts, shall be cooperatively provided by two or more county superintendents of schools without regard for county boundaries whenever a particular service may be so provided with economy and effectiveness.

(d) The direct operation of an educational program by the county superintendent of schools shall, except as specifically authorized by the Legislature, be limited to those emergency cases where children would otherwise be denied an opportunity for education.

SEC. 33. Section 1721 of the Education Code is amended to read:

1721. The county superintendent of schools may, with the approval of the county board of education, enter into an agreement with the governing board of any school district and community college districts in the territory under his or her jurisdiction, other than specified in Section 1720, to provide for the preparation of courses of study by the county superintendent of schools for use in the districts. The agreement shall provide for the payment of the cost of services rendered.

SEC. 34. Section 1831 of the Education Code is amended to read:

1831. The services described in Section 1830, except clerical, accounting, and stenographic services, shall be performed by persons

who hold a valid credential issued by the State Board of Education or Commission on Teacher Credentialing of one or more of the types specified in Section 1704 or who meets the minimum qualifications for hire as a community college faculty member as established by the Board of Governors of the California Community Colleges or who is otherwise eligible for service as a faculty member of a community college district.

Any person who is employed in the office of a county superintendent of schools on the effective date of this section and is performing any of the services described in this article may continue to perform those services without possessing the credential otherwise required as long as he or she remains continuously employed in his or her position.

SEC. 35. Section 1946 of the Education Code is amended to read:

1946. The county board of education may enter into agreements with the governing boards of any of the school districts or community college districts in the territory under the jurisdiction of the office of the county superintendent of schools for the conduct, under the direction of that office, of centralized in-service training programs for both certificated and classified employees of the school districts and community college districts and of that office.

Centralized in-service training program operations of the office of the county superintendent of schools shall be financed through the county school service fund, and shall be included in the budget prepared pursuant to Article 3 (commencing with Section 14050) of Chapter 1 of Part 9.

SEC. 39. Section 4002 of the Education Code is amended to read:

4002. Except as provided in Section 4001, if there are fewer than six school districts or community college districts in the territory under the jurisdiction of the county superintendent of schools of the county, he or she shall determine the number of, and appoint, the members of the county committee.

SEC. 40. Section 4003 of the Education Code is amended to read:

4003. In every county with six or more school districts or community college districts in the territory under the jurisdiction of the county superintendent of schools of the county, the county committee on school district organization shall have 11 members.

SEC. 42. Section 7000 of the Education Code is amended to read:

7000. (a) Notwithstanding Article 1 (commencing with Section 53200) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code, a county superintendent of schools, a school district, or a community college district, which provides health and welfare benefits or dental care benefits for the benefit of its certificated employees, shall permit enrollment in, respectively, the health and welfare benefit plan or dental care benefit plan currently provided for its current certificated employees by any former certificated employee thereof who retired therefrom under any public retirement system and his or her spouse and by any surviving spouse of a former certificated employee thereof who either retired

therefrom under any public retirement system or was, at the time of death, both employed thereby in a position requiring contributions to the State Teachers' Retirement System and a member of the State Teachers' Retirement System.

This subdivision does not apply to either the new spouse upon the remarriage of a surviving spouse of a former certificated employee or the children of a certificated or former certificated employee.

(b) A county superintendent of schools or district may develop an experience claims rating for the persons specified in subdivision (a) and may, if appropriate, require those persons to pay different rates as a class. Any plan pursuant to this article shall provide separate single and two-party rates for at least the following classes: for those under 65, for those over 65 who have Medicare A and B, and for those over 65 who do not have Medicare A.

(c) The county superintendent of schools, school district, or community college district shall annually select a one-month period during which persons described by subdivision (a) may elect to enroll in, respectively, the health and welfare benefit plan or the dental care benefit plan or change their enrollment from one to another health and welfare plan or dental care benefit plan, respectively.

(d) A certificated school employee who retired on or before August 24, 1986, the effective date of Chapter 561 of the Statutes of 1986, or the surviving spouse of a certificated employee retired as of August 25, 1986, shall be permitted to enroll in any district health and dental care plan during the 1986, 1987, and 1988 enrollment periods.

(e) A certificated school employee who retires after August 24, 1986, the effective date of Chapter 561 of the Statutes of 1986, or the surviving spouse of a certificated employee retired as of August 25, 1986, shall be allowed to enroll in the coverage provided by this article within 30 days of losing active employee coverage, but if the retiree does not enroll in a district health or dental care plan during this initial enrollment period, the retiree may be denied further opportunity to do so.

The enrollment period for retirees under this subdivision shall correspond to that provided to active employees, unless a district chooses to offer an additional enrollment period.

(f) This article shall permit enrollment into any district health and dental care plan only once. A retiree or spouse or surviving spouse of a certificated employee who has been previously covered under this article and who has voluntarily terminated that coverage, thereafter may be excluded from obtaining coverage under this article. This subdivision does not apply to a person who is changing plans within a district during an open enrollment period.

(g) Retirees or surviving spouses of certificated employees may be enrolled in a medical care plan pursuant to this section during periods other than those specified therein if they lose their coverage. With documentation of prior coverage, they may be allowed to enroll in a medical care plan, if they do so within 31 days of losing their

other coverage.

(h) Any person described by subdivision (a) who elects, pursuant to this article, to be covered by, respectively, a health and welfare benefit plan or dental care benefit plan, may be required to pay all premiums, dues, and other charges, including any increases in the rate of premiums or dues for these persons, and all costs incurred by the district or county superintendent of schools in administering this article.

SEC. 43. Section 7001 of the Education Code is repealed.

SEC. 44. Section 7002 of the Education Code is repealed.

SEC. 47. Section 8006 of the Education Code is amended to read:

8006. (a) There is, in the State Department of Education a vocational education staff responsible for the design, implementation, and maintenance of a basic integrated statewide information system for vocational education and technical training. The Board of Governors of the California Community Colleges shall collect and maintain information related to vocational education and technical training within the California Community Colleges for inclusion within the integrated statewide information system.

(b) The data gathering and analysis capabilities of the system described in subdivision (a) shall include, but not be limited to, maintaining comprehensive inventory of all programs of all vocational education and technical training programs which are maintained by the public schools.

SEC. 48. Section 8008 of the Education Code is amended to read:

8008. The system provided for in Section 8006, within the State Department of Education, shall be designed, implemented, and maintained in accordance with Chapter 7 (commencing with Section 10600) of Part 7.

SEC. 49. Article 2 (commencing with Section 8020) of Chapter 1 of Part 6 of the Education Code is repealed.

SEC. 50. Section 8070 of the Education Code is amended to read:

8070. The governing board of each school district participating in a vocational education program shall appoint a vocational education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representatives of the general public knowledgeable about the disadvantaged, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.

SEC. 51. Section 8080 of the Education Code is amended to read:

8080. For purposes of this chapter, the determination of definite need shall be established by the appropriate body as follows:

(a) The determination of need for a regional occupational center shall be established by the governing body of the agency maintaining the center.

(b) The determination of need for a high school shall be established by the governing body of the district maintaining the high school.

(c) The determination of need for a state university shall be established by the Trustees of the California State University.

SEC. 52. Section 8081 of the Education Code is amended to read:

8081. No programs, courses, classes, or instruction in cosmetology, as defined by Section 7321 of the Business and Professions Code, shall be initiated or expanded by any regional occupational center, high school, or campus of the California State University unless and until a determination has been made, by the appropriate body pursuant to Section 8080, that a definite need exists for the initiation or expansion of instruction and that existing private institutions offering the same or similar instruction are not adequately meeting that need.

SEC. 53. Section 8084 of the Education Code is amended to read:

8084. The appropriate body, as referred to in Section 8080, shall report its findings at a public meeting within 90 days from the date of being notified by a regional occupational center, high school, or campus of the California State University of its intent to initiate or expand its teaching of cosmetology.

SEC. 54. Section 8085 of the Education Code is repealed.

SEC. 56. Section 8092 of the Education Code is amended to read:

8092. Any school district or districts; any county superintendent or superintendents; or the governing body of any agency maintaining a regional occupational center or program may contract with a private postsecondary school authorized or approved pursuant to Chapter 3 (commencing with Section 94300) of Part 59 and which has been in operation not less than two full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by this code. Any school district, community college district, or county superintendent of schools may contract with an activity center, work activity center, or sheltered workshop to provide vocational skill training authorized by this code in any adult education program for substantially handicapped persons operated pursuant to subdivision (e) of Section 41976.

All contracts between a public entity and a private postsecondary school entered into pursuant to this section, or an activity center, work activity center, or sheltered workshop shall do all of the following:

(1) Be approved by the State Department of Education pursuant to rules and regulations adopted by the State Board of Education.

(2) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the public schools or the tuition the private postsecondary school charges its private students, whichever is lower.

(3) Provide that the public school receiving training in a private postsecondary school, or an activity center, work activity center, or sheltered workshop pursuant to that contract may not be charged additional tuition for any training included in the contract. The attendance of those students pursuant to a contract authorized by this section shall be credited to the public entity for the purposes of

apportionments from the State School Fund.

(4) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Vocational Education, or is a course of study for adult schools approved by the State Department of Education under Section 51056.

The students who attend a private postsecondary school or an activity center, work activity center, or sheltered workshop pursuant to a contract under this section shall be enrollees of the public entity and the vocational instruction provided pursuant to that contract shall be under the exclusive control and management of the governing body of the contracting public entity.

The State Department of Finance and the State Department of Education may audit the accounts of both the public entity and the private party involved in these contracts to the extent necessary to assure the integrity of the public funds involved.

SEC. 58. Section 8207 of the Education Code is amended to read:

8207. The Superintendent of Public Instruction may, pursuant to Section 204 of the Intergovernmental Cooperation Act of 1968, request waivers of single state agency requirements as necessary to utilize available federal funds for the purposes of this chapter. Until a waiver is granted by the federal government, the single state agency authorized by federal law to provide any child care service provided for in this chapter shall have only the functions, duties, and responsibilities conferred by this chapter upon the State Department of Education and the Superintendent of Public Instruction with respect to the child development services as are required by federal law and regulation. In that event, the single state agency shall provide child care and development services under a purchase of service agreement with the Superintendent of Public Instruction from funds appropriated for the services. The Superintendent of Public Instruction shall provide the necessary documents required by the federal government pursuant to this section to support the state's claim for federal reimbursement and shall certify that the school district, or other organization providing the care, has available the accounting records and other supporting documents to justify the claim for reimbursement and that the records are available for audit by the Controller and by any authorized federal agency.

SEC. 59. Section 8225 of the Education Code is amended to read:

8225. (a) Notwithstanding any provision of law to the contrary, higher educational institutions may establish and maintain child development programs on or near their respective campuses. Those higher educational institutions under contract with the State Department of Education for child care and development services pursuant to this chapter shall be subject to the rules and regulations adopted by the Superintendent of Public Instruction.

(b) Children of students of each campus operating a child development program shall have first priority for service in that program, in accordance with the priorities established in subdivision

(b) of Section 8263.

(c) The higher educational institutions may institutionalize child development programs on their respective campuses for the purpose of incorporating child development programs into the missions and functions of the respective campuses.

(d) The Superintendent of Public Instruction, in cooperation with higher educational institutions, shall establish rules and regulations governing programs operated pursuant to this section.

(e) Nothing in this chapter shall be construed to permit the governing board of a community college district to expend state funds appropriated to the district for support of the community college for the direct operating costs of a campus child development center.

(f) It is the intention of the Legislature that a consortium composed of higher educational institutions be established by the institutions to improve communication and cooperation and to advise and assist the Superintendent of Public Instruction in the development of rules and regulations and policies and procedures affecting child care and development programs. The Superintendent of Public Instruction in cooperation with the consortium shall be responsible for ongoing communication with and dissemination of information to all campus child care and development agencies under contract with the State Department of Education.

SEC. 60. Section 8285.5 of the Education Code is amended to read:

8285.5. (a) Notwithstanding any other provision of this chapter, at the times the Superintendent of Public Instruction proposes to expand child care and development services, he or she shall submit a written request to the local private industry council, established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, for each service delivery area in which the proposed expansion is to occur.

(b) The written request shall describe the amount of additional funding to be allocated within the service delivery area and any other pertinent information the superintendent may deem useful and necessary.

(c) The Superintendent of Public Instruction and, where appropriate, the governing board of the local community college district shall request information from each local private industry council, describing the unmet child care needs of persons eligible to participate in the council's job preparation and training services plan. The description may include the geographic distribution within the service delivery area of eligible participants, the number and ages of children needing care, the geographic distribution of job preparation and training sites, and the extent to which child care needs are currently being met. The superintendent shall review the findings and recommendations of each local council when implementing the actual expansion of child care services within the

service delivery area.

(d) Nothing in this section shall be construed to preclude the Superintendent of Public Instruction from contacting a local private industry council prior to the development of any expansion proposal in order to obtain the council's advice and recommendations relating to child care and development services needs occurring within the service delivery area.

(e) For the purposes of this section, the term "expansion of child care and development services" means an increase during a calendar year in a service delivery area's aggregate average daily enrollment of children receiving subsidized child care services due to new funds available for these services.

SEC. 61. Section 8320 of the Education Code is amended to read:

8320. The governing board of any school district or a county superintendent of schools with the approval of the county board of education is authorized to establish and maintain child development programs upon the approval of, and subject to the regulations of the Superintendent of Public Instruction.

SEC. 62. Section 8322 of the Education Code is amended to read:

8322. The governing board of any school district or the county superintendent of schools may do the following:

(a) Accommodate in a child development facility maintained by it children residing in another district, upon terms and under conditions agreed upon by the governing boards of both districts.

(b) Permit the use of, and furnish maintenance for, buildings, grounds, and equipment, and the use of existing administrative personnel for the purposes of this chapter.

(c) Adopt reasonable rules and regulations governing the child development services or facilities maintained by it that are not in conflict with law or the standards and regulations established for child development services by the Superintendent of Public Instruction.

SEC. 63. Section 8323 is added to the Education Code, to read:

8323. (a) Notwithstanding any other provision of law, a child under two years of age whose parent is a student, or whose parents are students, may attend child development centers consistent with the priorities established pursuant to law.

(b) Children of students attending school at a particular campus shall have first priority for attendance at a child development center at that campus.

(c) Student families, as defined in Section 8250.1, whose gross monthly income falls within the fee schedule established pursuant to Section 8249, shall pay fees according to the fee schedule.

(d) Highest priority shall be given to student families with the greatest income deficit, and lowest priority to student families with the greatest income.

(e) For the purposes of assigning eligibility priority, applicant student families shall be grouped according to the amount of their income in one-hundred-dollar ($100) monthly increments. All

student families within a particular income range shall be treated as if their incomes were the same, and priority for eligibility within each particular income range shall be assigned on the following basis:

(1) Single-parent student families.

(2) Two-parent families, where both parents are students or where one parent is a student and the other is working.

(f) Student families who are recipients of public assistance shall be subject to the same assignment of priority as other student families whose incomes fall in the same income range.

SEC. 65. Section 8328 of the Education Code is amended to read:

8328. The governing board of any school district or the county superintendent of schools shall establish in the county treasury a fund to be known as the "child development fund" into which shall be paid all funds received by the district or the county for, or from the operation of, child development services under this chapter. The costs incurred in the maintenance and operation of child development services shall be paid from the fund, with accounting to reflect specific funding sources.

Funds of a district derived from the receipt of district taxes or derived from moneys apportioned to the district for the support of schools thereof, in addition to state moneys appropriated for the support of child development services, fees, and federal funds, may be expended for, or in connection with child development services.

SEC. 66. Section 8329 of the Education Code is amended to read:

8329. The governing board of any school district maintaining a child development program may include in its budget the amount necessary to initiate, operate, and maintain a child development program pursuant to this chapter and the board of supervisors shall levy a school district tax necessary to raise that amount. The tax shall be in addition to any other school district tax authorized by law to be levied.

SEC. 67. Section 8329.5 of the Education Code is repealed.

SEC. 68. Section 8362 of the Education Code is amended to read:

8362. The same fee as that prescribed for a credential provided in Section 44235 shall be charged for either the issuance or renewal of each child development permit authorizing service in the supervision and instruction of children in child development programs or authorizing service as a supervisor in a program.

SEC. 71. Section 8394 of the Education Code is amended to read:

8394. In school districts maintaining more than one high school, the governing board, after soliciting the opinions of student parents and other interested persons, shall determine the location of the infant care and development center.

Infant care and development centers shall be located within high school buildings or within that proximity to high school buildings as would ensure convenient access by student parents and other students.

SEC. 72. Section 8510 of the Education Code is amended to read:

8510. Unless the context clearly requires otherwise, the

definitions set forth in this section govern the construction of this chapter.

(a) "Adult basic education" is education in communication and computational skills to and including the 12th grade level, including English as a second language and citizenship.

(b) "Classes for adults" are classes without a college grade level designation organized primarily for persons 18 years of age or older.

(c) "Course approval" is the process of approval by either the State Department of Education or the Board of Governors of the California Community Colleges.

(d) "Mutual agreement" means an agreement between two or more governing boards of districts.

SEC. 73. Section 8511 of the Education Code is repealed.

SEC. 74. Section 8513 of the Education Code is repealed.

SEC. 75. Section 8514 of the Education Code is repealed.

SEC. 76. Section 8515 of the Education Code is repealed.

SEC. 77. Section 8516 of the Education Code is repealed.

SEC. 78. Section 8534 of the Education Code is amended to read:

8534. Programs for adults involving postsecondary programs that meet the standards prescribed by the Board of Governors of the California Community Colleges for credit and noncredit courses are the responsibility of community college districts.

SEC. 79. Section 8760 of the Education Code is amended to read:

8760. (a) The governing board of any school district may do the following:

(1) Conduct programs and classes in outdoor science education and conservation education within or without the boundaries of the district and for that purpose employ instructors, supervisors, and other personnel and provide necessary equipment and supplies.

(2) Acquire and maintain real or personal property needed for outdoor science education and conservation education programs and classes either within or without the boundaries of the district either by purchase, rental, lease, gift, or other means in the same manner as if the property were within the boundaries of the school district.

(3) Contract with the United States, the State of California, any city, county, city and county or school district therein, or any combination thereof, for the joint operation and maintenance of these programs and classes in outdoor science education and conservation education or for assistance in their operation and maintenance.

(4) Transport or arrange transportation of pupils, instructors, supervisors, or other personnel to or from places where these programs and classes are being conducted, whether within or without the district; provided, the transportation is within the state.

(b) The governing board of any school district may contract with an outside provider for the services of naturalists. The services provided by the naturalists shall be under the exclusive control and management of the governing board of the school district and shall comply with all guidelines established by the Superintendent of

Public Instruction relating to outdoor educational programs. Any naturalist under contract with the governing board of a school district pursuant to this section and all services provided by a naturalist shall be under the supervision of a certificated employee of the school district. Any naturalist assigned to serve school districts under an outside contract shall be subject to Sections 45125 and 49406. No person who has been convicted of any sex offense defined in Section 44010, or any controlled substance offense defined in Section 44011, shall be permitted to render service as a naturalist.

SEC. 80. Section 8761 of the Education Code is amended to read:

8761. Notwithstanding any other provision of this code, whenever an outdoor science program involves studies in marine science, the governing board of any school district or a county superintendent of schools may transport, or arrange transportation of, pupils, instructors, supervisors, or other personnel aboard U.S. Coast Guard approved vessels in the waters of the Pacific Ocean for distances not to exceed five miles westerly of any offshore island which is a part of the State of California.

SEC. 81. Section 8762 of the Education Code is amended to read:

8762. The governing board of any school district may:

(a) Conduct courses in forestry, and for that purpose employ instructors and supervisors of classes, and acquire necessary equipment.

(b) Acquire forest lands outside the boundary of the district by lease for a period not exceeding five years, or purchase or sell forest lands in the same manner as lands within the boundary of the district are purchased or sold.

(c) Afforest and reforest, and plant trees, shrubs, and vines on the lands; or upon any public lands which may be placed at its disposal, and enter into contracts and agreements with the government of the United States, the state, or any political subdivision thereof for that purpose.

(d) Transport pupils, instructors, or supervisors of classes to or from classes or places where the work is being done, whether within or without the district, in the same manner and subject to the same limitations as in transporting pupils to and from school.

SEC. 82. Section 8763 of the Education Code is amended to read:

8763. The county superintendent of schools may, with the approval of the county board of education, enter into agreements with the governing board of one or more school districts or private schools to provide programs and classes in outdoor science education and conservation education for pupils in the district or private school. Except as otherwise provided in this article, the agreement shall provide for the payment by the district or the private school of the actual cost of providing the programs or classes. The county superintendent of schools shall transfer from the funds of the district or the private school shall pay, as the case may be, to the county school service fund the amounts set forth in the agreement.

SEC. 83. Section 8764 of the Education Code is amended to read:

8764. The school district or districts entering into agreements pursuant to this article with the county superintendent of schools may agree to make capital outlay expenditures, as well as pay for the other costs of the program. Title to all property acquired by the capital outlay expenditures shall be vested in the office of the county superintendent of schools, and the participating school districts shall have no interest in the property, nor in the proceeds of any sale, lease, exchange, or other disposition of the property, unless the parties otherwise provide in the agreement which authorizes the acquisition of the property.

SEC. 84. Section 8765 of the Education Code is amended to read:

8765. Except as otherwise provided, all of the powers and duties authorized for governing boards of school districts by Section 8760 are powers and duties of the county superintendent of schools whenever, pursuant to this article, he or she provides programs and classes in outdoor science education and conservation education.

SEC. 85. Section 8771 of the Education Code is amended to read:

8771. The county superintendent of schools may, with the approval of the county board of education, sell, lease, exchange, or otherwise dispose of real or personal property, title to which is vested in his or her office, pursuant to the same procedures as are established by law for the sale, lease, exchange, or other disposition of real or personal property by a school district or community college district. Unless otherwise provided in the agreement which authorized the purchase of the real or personal property, the proceeds of any sale, lease, exchange, or other disposition of real or personal property shall be vested in the office of the county superintendent of schools.

SEC. 86. Section 10407 of the Education Code is amended to read:

10407. The governing board of a school district or community college district may request waiver of any section or sections of this code relating to the educational programs or administrative functions described in Section 10400 if the waiver is necessary to establish and operate a program under this chapter. The need for a waiver shall be explained and justified to the Superintendent of Public Instruction or the Board of Governors of the California Community Colleges, as the case may be, and the State Board of Education, or the Board of Governors of the California Community Colleges, as the case may be, may grant, in whole, or in part, any waiver request.

SEC. 87. Section 10504 of the Education Code is amended to read:

10504. An eligible regional educational data-processing center is one that meets the following requirements:

(a) It possesses equipment, personnel and funds sufficient, as determined by regulations of the State Board of Education, to convert and correlate basic source material into data-processing form by use of a basic data system.

(b) It is a regional education data-processing center as defined in Section 10501.

(c) It meets the minimum standards established by the State Board of Education.

SEC. 88. Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of the Education Code is repealed.

SEC. 89. Section 10900 of the Education Code is amended to read:

10900. The purposes of this chapter are:

(a) To promote and preserve the health and general welfare of the people of the state and to cultivate the development of good citizenship by provision for adequate programs of community recreation.

(b) To authorize public corporations or districts having powers to provide recreation, cities, counties, cities and counties, and school districts to organize, promote, and conduct programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the state.

SEC. 90. Section 10901 of the Education Code is amended to read:

10901. The following terms, wherever used or referred to in this chapter have the following meanings, respectively, unless a different meaning clearly appears from the context:

(a) "Public authority" means any city of any class, city and county, county of any class, public corporation or district having powers to provide recreation, or school district in the state.

(b) "Governing body" means, in the case of a city, the city council, municipal council, or common council; in the case of a county or city and county, the board of supervisors; in the case of a public corporation or district, the governing board of the public corporation or district; and in the case of a school district, the governing board of the school district.

(c) "Recreation" means any activity, voluntarily engaged in, which contributes to the physical, mental, or moral development of the individual or group participating therein, and includes any activity in the fields of music, drama, art, handicraft, science, literature, nature study, nature contacting, aquatic sports, and athletics, or any of them, and any informal play incorporating any such activity.

(d) "Community recreation" and "public recreation" mean the recreation as may be engaged in under direct control of a public authority, or any camping or outdoor recreation activity which is (1) sponsored by a nonprofit organization, (2) for the benefit of disadvantaged or handicapped schoolage children, and (3) in a county with a population less than or equal to 45,000 according to the most recent federal census.

(e) "Nonprofit organization" means those nonprofit organizations which, as determined by the governing board of the school district, are unable to pay for the private transportation of disadvantaged or handicapped schoolage children to recreation activities.

(f) "Recreation center" means a place, structure, area, or other facility under the jurisdiction of a governing body of a public

authority used for community recreation whether or not it may be used primarily for other purposes, playgrounds, playing fields or courts, beaches, lakes, rivers, swimming pools, gymnasiums, auditoriums, libraries, parks adjacent to school sites, recreational community gardens, rooms for arts and crafts, camps, and meeting places.

Playgrounds, outdoor playing fields or courts, swimming pools, and camps, with necessary equipment and appurtenances for their operation, under the jurisdiction of a governing board of a public authority used for community recreation shall be considered recreation centers within the meaning of this chapter whether or not they may be used primarily for other purposes.

SEC. 91. Section 10907 of the Education Code is amended to read:

10907. The governing body of any public authority other than a school district may designate any already existing board, officer, or employee of the public authority to exercise the powers granted by this chapter to carry out the purposes of this chapter, or may provide for the appointment of a board of recreation commissioners to exercise these powers. A school district may appoint one or more members of the board of trustees, officers or employees, to represent the district on a board of recreation commissioners.

SEC. 92. Section 10910 of the Education Code is amended to read:

10910. The governing body of any school district may use the buildings, grounds, and equipment of the district, or any of them, to carry out the purposes of this chapter, or may grant the use of any building, grounds, or equipment of the district to any other public authority for the purposes, whenever the use of the buildings, grounds, or equipment for community recreational purposes will not interfere with use of the buildings, grounds, and equipment for any other purpose of the public school system. Nothing in this section is intended to repeal any provision of, or to restrict or otherwise affect the use of school buildings under Sections 40040 to 40058, inclusive.

SEC. 93. Section 10912 of the Education Code is amended to read:

10912. The governing body of a school district may require persons, other than students, or organizations desiring to use the recreational facilities on school grounds or belonging to a school or the facilities provided by the district at a community recreation center maintained solely by the district to pay fees for the use as the governing body may prescribe.

SEC. 94. Section 10913 of the Education Code is amended to read:

10913. The governing body of a school district may require persons or organizations desiring to use schoolbuses belonging to a school to pay fees for the use as the governing body may prescribe.

SEC. 95. Section 10914 of the Education Code is amended to read:

10914. All necessary expenses incurred by the governing body of any school district in carrying out the purposes of this chapter are a charge against the funds of the district from whatever source the funds have been received. All the expenditures shall be made in the same manner as funds are expended for other school purposes.

Nothing in this chapter shall be construed to change in any way existing laws regarding the use of school grounds or school buildings by governing boards of school districts, except as specifically provided in this chapter.

SEC. 96. Section 11001 of the Education Code is amended to read:

11001. The Chancellor of the California State University shall establish an advisory committee to assist in selecting proposals to be funded and developing criteria for project evaluation. The committee shall be composed of the following members:

(a) Two certificated secondary school teachers, including at least one junior high or intermediate school teacher, appointed by the Superintendent of Public Instruction.

(b) Two certificated secondary school employees with responsibility for curriculum administration, appointed by the Superintendent of Public Instruction.

(c) One director of a regional consortium participating in the California Student Opportunity Access Program established pursuant to Chapter 113 of the Statutes of 1978, appointed by the Student Aid Commission.

(d) Two representatives of the California Community Colleges, to be appointed by the Board of Governors of the California Community Colleges, at least one of whom shall be a faculty member.

(e) Two representatives of the California State University, to be appointed by the Chancellor of the California State University, at least one of whom shall be a faculty member.

(f) Two representatives of the University of California, appointed by the President of the University of California, at least one of whom shall be a faculty member.

(g) One representative, appointed by the Director of the California Postsecondary Education Commission.

Faculty appointments to the advisory committee shall be made by the appropriate appointing authority through consultation with the faculty senate.

SEC. 97. Section 12020 of the Education Code is amended to read:

12020. The State Board of Education is designated as the state educational agency to carry out the purposes and provisions of Public Law 815 and Public Law 874 of the 81st Congress, and is vested with all necessary power and authority to perform all acts necessary to receive the benefits and to allocate the funds provided by the acts of Congress.

SEC. 98. Section 12210 of the Education Code is repealed.

SEC. 99. Section 12220 of the Education Code is amended to read:

12220. Whenever by the provisions of any act of Congress the act is to be administered in the state by the Board of Governors of the California Community Colleges, or any one or more of the officers, or agencies, the officers and agencies designated in the act of the Congress are authorized to administer the act in the state. The officers and agencies are vested with all necessary power and

authority to cooperate with the government of the United States, or any agency or agencies thereof in the administration of the act of Congress and rules and regulations lawfully adopted thereunder.

SEC. 100. Section 12302 of the Education Code is amended to read:

12302. The funds received by the state under Sections 12020, 12220, and 12300 to 12307, inclusive, shall be expended by the officers or agency administering the program to carry out the provisions of the act of the Congress and rules and regulations lawfully adopted thereunder. These funds are exempt from Section 925.6 of the Government Code and shall be paid out by the Treasurer on warrants drawn by the Controller on claims submitted by the Superintendent of Public Instruction or the Board of Governors of the California Community Colleges.

SEC. 101. Section 12400 of the Education Code is amended to read:

12400. The Board of Governors of the State Nautical School on behalf of the State Nautical School, the governing board of a school district on behalf of any school maintained by the district, and any county superintendent of schools is vested with all necessary power and authority to perform all acts necessary to receive the benefits and to expend the funds provided by any act of Congress heretofore or hereafter enacted, and with all necessary power and authority to cooperate with, or enter into agreements with, the government of the United States, or any agency or agencies thereof, and with the State Board of Education and with other school districts and private or public nonprofit organizations for the purpose of receiving the benefits and expending the funds provided by the acts of Congress, in accordance with the acts, or any rules or regulations adopted thereunder, or any state plan or rules or regulations of the State Board of Education adopted in accordance with the acts of Congress. Participation may also include the expenditure by the governing board of the State Nautical School, by the governing board of any school district, or the county superintendent of schools of whatever funds may be required by the federal government as a condition to participation.

Participation in the act of Congress known as the "Emergency Employment Act of 1971" (P.L. 92-54) may be undertaken notwithstanding Section 44858.

SEC. 102. Section 12401 of the Education Code is amended to read:

12401. To the extent permitted by, and pursuant to, federal law, agreements may be entered into by the governing board of a school district without prior approval of the State Board of Education.

SEC. 103. Section 12402 of the Education Code is amended to read:

12402. The governing board of a school district, on behalf of any school maintained by the district, and any county superintendent of schools, is vested with all necessary power and authority to perform

all acts necessary, provided the acts are consistent with other provisions contained in this code, to implement nutrition programs for the elderly, so long as there is available funding for the programs. Nutrition programs for the elderly shall include, but shall not be limited to, programs authorized pursuant to the McCarthy-Kennick Nutrition Program for the Elderly Act of 1972 as provided by Chapter 5.5 (commencing with Section 18325) of Part 6 of Division 9 of the Welfare and Institutions Code.

SEC. 104. Section 12404 of the Education Code is repealed.

SEC. 105. Section 12405 of the Education Code is amended to read:

12405. The governing board of any school district is authorized to accept the provisions of any act of Congress under which federal funds are available for purposes of this chapter, and may participate in any program provided thereunder in order to accept and expend the federal funds pursuant to the act of Congress and this chapter. Participation may include the expenditure by the district of whatever funds may be required by the federal government as a condition to participation.

SEC. 106. Section 14000 of the Education Code is amended to read:

14000. It is the intent of the Legislature that the administration of the laws governing the financial support of the public school system in this state be conducted within the purview of the following principles and policies:

The system of public school support should be designed to strengthen and encourage local responsibility for control of public education. Local school districts should be so organized that they can facilitate the provision of full educational opportunities for all who attend the public schools. Local control is best accomplished by the development of strong, vigorous, and properly organized local school administrative units. It is the state's responsibility to create or facilitate the creation of local districts of sufficient size to properly discharge local responsibilities and to spend the tax dollar effectively.

The system of public school support should assure that state, local, and other funds are adequate for the support of a realistic funding level. It is unrealistic and unfair to the less wealthy districts to provide for only a part of the financing necessary for an adequate educational program.

The system of public school support should permit and encourage local school districts to provide and support improved district organization and educational programs. The system of public school support should prohibit the introduction of undesirable organization and educational practices, and should discourage any of those practices now in effect. Improvement of programs in particular districts is in the interests of the state as a whole as well as of the people in individual districts, since the excellence of the programs in some districts will tend to bring about program improvement in other districts.

The system of public school support should make provision for the apportionment of state funds to local districts on a strictly objective basis that can be computed as well by the local districts as by the state. The principle of local responsibility requires that the granting of discretionary powers to state officials over the distribution of state aid and the granting to these officials of the power to impose undue restriction on the use of funds and the conduct of educational programs at the local level be avoided.

The system of public school support should effect a partnership between the state, the county, and school districts, with each participating equitably in accordance with its relative ability. The respective abilities should be combined to provide a financial plan between the state and the local agencies for public school support. Toward this support program, each county and district, through a uniform method, should contribute in accordance with its true financial ability.

The system of public school support should provide for essential educational opportunities for all who attend the public schools. Provision should be made in the financial plan for adequate financing of all educational services.

The broader based taxing power of the state should be utilized to raise the level of financial support in the properly organized but financially weak districts of the state, thus contributing greatly to the equalization of educational opportunity for the students residing therein. It should also be used to provide a minimum amount of guaranteed support to all districts, for that state assistance serves to develop among all districts a sense of responsibility to the entire system of public education in the state.

SEC. 107. Section 14020 of the Education Code is repealed.

SEC. 108. Section 14021 of the Education Code is repealed.

SEC. 116. Section 15000 of the Education Code is repealed.

SEC. 117. Section 15100 of the Education Code is amended to read:

15100. Except as otherwise provided by law, the governing board of any school district or community college district may, when in its judgment it is advisable, and shall, upon a petition of the majority of the qualified electors residing in the school district or community college district, order the county superintendent of schools to call an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the following purposes:

(a) The purchasing of school lots.

(b) The building or purchasing of school buildings.

(c) The making of alterations or additions to the school building or buildings other than as may be necessary for current maintenance, operation, or repairs.

(d) The repairing, restoring, or rebuilding of any school building damaged, injured, or destroyed by fire or other public calamity.

(e) The supplying of school buildings and grounds with furniture,

equipment or necessary apparatus of a permanent nature.

(f) The permanent improvement of the school grounds.

(g) The refunding of any outstanding valid indebtedness of the district, evidenced by bonds, or of state school building aid loans.

(h) The carrying out of the projects or purposes authorized in Section 39613 or 81613.

(i) The purchase of schoolbuses the useful life of which is at least 20 years.

(j) The demolition or razing of any school building with the intent to replace it with another school building, whether in the same location or in any other location.

Any one or more of the purposes enumerated, except that of refunding any outstanding valid indebtedness of the district evidenced by bonds, may, by order of the governing board entered in its minutes, be united and voted upon as one single proposition.

SEC. 118. Section 15106 of the Education Code is amended to read:

15106. Any unified school district or community college district may issue bonds not to exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located.

In computing the outstanding bonded indebtedness of any unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

(a) For the purposes of the State School Building Aid Law of 1952 with respect to applications for apportionments and apportionments filed or made prior to September 15, 1961, and to the repayment thereof, Chapter 6 (commencing with Section 15700) of this part, inclusive, only, any unified school district shall be considered to have a bonding capacity in the amount permitted by law for an elementary school district and a bonding capacity in the amount permitted by law for a high school district.

(b) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987–88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987–88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized

assessment roll. In the event of the unification of two or more school districts or community college districts subsequent to the 1987–88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district or community college district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15102.

SEC. 119. Section 15140 of the Education Code is amended to read:

15140. Bonds of a school district or community college district shall be offered for sale by the board of supervisors of the county, the county superintendent of which has jurisdiction over the district, or the community college district governing board, where appropriate, as soon as possible following receipt of a resolution duly adopted by the governing board of the school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds.

SEC. 120. Section 15141 of the Education Code is amended to read:

15141. When authorized by the governing board of a school district or a community college district, bonds of a school district or a community college district may be offered for sale as a group by the board of supervisors of the county, the county superintendent of schools, or the governing board of a community college district, which has jurisdiction over the district, at a time determined by the board of supervisors following receipt of a resolution duly adopted by the governing board of the school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. Bidders shall be required to bid a lump sum bid on all bonds as a group. If bids satisfactory to the governing board of each school district included in the group are received, the bonds offered for sale shall be awarded to the bidder whose bid will result in the lowest net interest cost for the group or for the bonds of any district included within the group. Bonds shall be issued and sold in the name of each school district or a community college district in the same manner as provided in this chapter.

SEC. 121. Section 15142 of the Education Code is amended to read:

15142. The bonds shall be issued in the denomination or denominations as the board of supervisors or governing board of the community college district may prescribe.

SEC. 122. Section 15147 of the Education Code is amended to

read:

15147. Before selling the bonds, or any part of them, the board of supervisors or community college district, as appropriate, shall advertise for bids at least two weeks in some daily or weekly newspaper of general circulation published in the county whose county superintendent of schools or governing board of the community college district has jurisdiction over the district, or if there is no newspaper published in the county, in a newspaper published in some other county in the state having a general circulation in the county.

SEC. 123. Section 15252 of the Education Code is amended to read:

15252. The board of supervisors of the county, the superintendent of schools which has jurisdiction over any school district, shall annually at the time of making the levy of taxes for county purposes estimate the amount of money required to meet the payment of the principal and interest on bonds of the district authorized by the electors of the district and not sold, and which the governing board of the district informs the board in their belief will be sold before the next tax levy, and the board of supervisors shall levy a tax sufficient to pay the principal and interest so estimated.

SEC. 124. Section 15254 of the Education Code is amended to read:

15254. This article shall apply only to bonds of a school district or community college district which were approved by the electors prior to July 1, 1978, and to bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the voters on or after June 4, 1986.

SEC. 125. Section 15502 of the Education Code is amended to read:

15502. As used in this chapter:

(a) "State project" means any construction project undertaken by the state, or the state and federal government jointly, which will cause a sudden influx of people into the area affected and where sufficient housing, schools, and other community facilities are not available. For the purposes of this subdivision, the Governor is hereby empowered to proclaim any major construction project undertaken by the state as a "state project" and define the area affected or likely to be affected thereby when:

(1) He or she finds that the construction project will cause a sudden influx of people into the area; and

(2) He or she is requested to do so by the county board of supervisors.

The proclamation shall be in writing and shall take effect immediately. As soon thereafter as possible it shall be filed in the office of the Secretary of State.

(b) "Board" means the State Allocation Board, created by Section 7 of the Construction and Employment Act as amended.

(c) "Director" means the Director of Education for kindergarten

and grades 1 to 12, inclusive.

(d) "Project" means the purposes for which a school district has applied for an apportionment.

(e) "Construction project" means the purposes for which a school district has applied for an apportionment at a given location.

(f) "Grade level maintained by a district" means (1) the kindergarten, if any, and grades 1 to 6, or grades 1 to 8, inclusive, maintained by an elementary school district or a unified school district; or (2) grades 7 to 12, grades 9 to 12, inclusive, or grades 7 to 10, inclusive, maintained by a high school district or unified school district, but not more than one grade level shall be claimed by any district under any one of the subdivisions of this paragraph.

(g) "Apportionment" means an apportionment made under this chapter unless the context otherwise requires.

(h) "Project children" means children of parents who have come to the district subsequent to the start of the state project and who are employed by the State of California or the federal government in connection with a state project and children of parents employed by any contractor or subcontractor of a state project.

(i) "Indirect project children" means children of parents who have come to the district subsequent to the start of the state project and who are not employed by a contractor or subcontractor of a state project but who are children in the area in addition to those which would be expected as a result of normal development and growth of the area as determined pursuant to regulations of the director which he or she is hereby authorized to adopt.

(j) "Parent" includes a legal guardian or other person standing in loco parentis.

(k) "Department" means the State Department of Education.

SEC. 126. Section 15520 of the Education Code is amended to read:

15520. Apportionment from the State School Construction Fund to school districts shall be made in the manner and subject to the conditions herein provided and in accordance with policies adopted by the board, for the following purposes: (a) the purchase and improvement of schoolsites which have been approved by the department; (b) the purchase of desks, tables, chairs, and equipment, as approved by the department; and (c) the planning and construction, reconstruction, alteration of, and addition to, school buildings for facilities as are approved by the department as essential, all of which purposes are hereby declared to be, and are, public works.

Where a district is required by a contract entered into between itself and a contractor, to obtain at its own expense insurance covering risks incurred during any construction, reconstruction or alteration for which an apportionment has been made, the cost thereof may be paid either directly, or by way of reimbursement, to said district out of said apportionment, or out of any apportionment made specifically covering the insurance; provided, that in other

respects said apportionments are eligible for payment under this chapter.

SEC. 127. Section 15527 of the Education Code is amended to read:

15527. No apportionment to a school district under this chapter shall become final, nor shall any agreement authorized by Section 15528 be entered into, unless at an election called by the governing board of the district, two-thirds of the qualified electors of the district voting thereat have authorized the governing board to accept, expend, and repay an apportionment as provided in this chapter or, with respect to an agreement authorized by Section 15528, to obligate the district in an amount equal to or in excess of the maximum amount which the district could be obligated by the agreement, or by any act of its governing board, or for which it is responsible, contemplated, or permitted under the agreement. The election shall be called, held, and conducted in the same manner as are elections to authorize the issuance of district bonds, except that the ballot shall contain substantially the following words:

"Shall the governing board of the district be authorized (1) to accept and expend an apportionment from the State of California under and subject to the provisions of the State Project Area School Construction Law, a portion of which amount is subject to repayment as provided by said law, or (2) to enter into an agreement or agreements with the state pursuant to Section 15528 of the Education Code, which will at the time of such agreement or agreements (or at the time of any subsequent act of the governing board, or for which it is responsible, contemplated or permitted thereby) commit the district to a total expenditure in connection with all such agreements of not more than _____ dollars, or both. Yes _____ No _____."

SEC. 128. Section 15528 of the Education Code is amended to read:

15528. In addition to the powers granted the board under this chapter, the board shall have authority (1) to make apportionments to districts for the purchase of sites only, or for the construction or purchase of temporary or portable buildings, and for the cost of site preparation, including any necessary utility costs, in connection with their utilization and (2) to establish standards in conjunction with the State Department of Education pertaining to the sites and buildings as a condition for making the apportionment. In addition the board may also expend moneys from the State School Construction Fund directly for the construction, acquisition, storage, maintenance, and repair of the buildings, including administrative costs related thereto. In the latter event the board may lease, sell, or transfer under a lease-purchase agreement the buildings to school districts eligible for aid under this chapter, under the terms as it deems fit. Agreements pertaining thereto may provide for the payment by the state of site preparation costs, including any necessary utility costs, sufficient to permit their utilization.

Any buildings leased for placement on the school property or under a purchase or a lease-purchase agreement shall be deemed the construction or alteration of a school building as those terms are defined in Sections 39140 to 39155, inclusive.

The consideration provided by any agreement between the state and districts pursuant to this section shall as nearly as possible reflect an amount which would return to the state a fair pro rata proportion of its capital investment and expenditures connected therewith in the light of the benefits conferred by the agreement. The consideration shall be paid by the districts promptly when due, and Section 15573 shall not be deemed applicable to reduce the consideration, provided that the amounts so repaid shall be redeposited in the State School Construction Fund.

Whenever the board deems it economically desirable to do so the board may dispose of any facilities acquired or constructed directly by it under this section to any public or private parties under the terms and in the manner as the board deems fit, save insofar as the disposal is inconsistent with any agreement under this section between the board and an affected district. The board is authorized to do any and all things necessary to effectuate the purposes of this section, and any eligible school district is authorized to enter into an agreement with the board to carry out the purposes hereof.

No agreement shall however be entered into under this section unless the department has with respect thereto, or as a condition of making the agreement, approved (1) the property to be transferred, including any incidental construction pertaining thereto, (2) whether the agreement shall be by lease or sale, and (3) the term of the transfer, if less than a sale, including any contingent or indefinite term. "Sale" as used in this paragraph includes a lease-purchase transaction. The jurisdiction of the department shall not otherwise extend to the terms of the agreement.

SEC. 129. Section 15541 of the Education Code is amended to read:

15541. In the computation of the apportionments to applicant school districts, the board may utilize the facilities and services of any department or agency of the state and may delegate the performance of any duties or functions, except those specifically delegated by this chapter to the director or department, to any officer or employee thereof as the board deems necessary and proper.

SEC. 130. Section 15551 of the Education Code is amended to read:

15551. The election by a school district upon the acceptance, expenditure, and repayment of an apportionment prescribed by Section 15527 may be called and held either before or after the making of an apportionment.

SEC. 131. Section 15570 of the Education Code is amended to read:

15570. Each school district to which an apportionment is made

under this chapter shall repay the principal amount of the apportionment in the manner prescribed by this article.

SEC. 132. Section 15574 of the Education Code is amended to read:

15574. The Controller shall, during the fiscal year in which he or she determines the annual repayment as provided in Section 15572, and for each subsequent fiscal year not exceeding 30, deduct the total amount of the annual repayment of each district in equal amounts from each of the February, March, April, and May installments of the apportionments made to the district from the State School Fund under Sections 46304, 46305, and 92 or 41050, Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive, and, on order of the Controller, the amount so deducted shall be transferred to the General Fund of the state.

SEC. 133. Section 15701 of the Education Code is amended to read:

15701. As used in this chapter:

(a) "Board" means the State Allocation Board, created by Section 7 of the Construction and Employment Act as amended.

(b) "Director" means the Director of Education for kindergarten and grades 1 to 12, inclusive.

(c) "Project" means the purposes for which a school district has applied for an apportionment under this chapter.

(d) "Grade level maintained by a district" means (1) the kindergarten, if any, and grades 1 to 6, or grades 1 to 8, inclusive, maintained by an elementary school district or a unified school district; or (2) grades 7 to 12, grades 9 to 12, inclusive, or grades 7 to 10, inclusive, maintained by a high school district or unified school district.

(e) "Apportionment" means an apportionment made under this chapter unless the context otherwise requires.

SEC. 134. Section 15718 of the Education Code is amended to read:

15718. The sum of two million dollars ($2,000,000) was by Chapter 13 of the Statutes of 1952 (First Extraordinary Session) made available from the Public School Building Loan Fund for apportionment by the board pursuant to this chapter, except as otherwise provided by this section and to be transferred by the Controller as needed into a separate account in the State School Building Fund which was created in the State Treasury.

Apportionments made under this section shall be available as grants to those school districts to which apportionments have been made under this chapter, prior to April 1, 1952, and only for the amounts thereof as are in excess of the apportionments the voters of the districts voted to accept and repay under Sections 15721, 15722, and 15723.

If and when the electors of districts receiving apportionments under this section, vote to accept and repay additional amounts under Sections 15721, 15722, and 15723, the board may make

apportionments under other sections of this chapter in substitution in whole or in part of the grants made under this section.

In the event the electors of the district fail to vote to accept and repay the additional amounts or if apportionments covering the amounts are not made under other sections of this chapter, beginning in September, 1953, and annually for nine years thereafter, apportionments made to the districts from the State School Fund under Sections 46304, 46305, and 92 or 41050, Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive, or any successor thereof, shall be reduced by an amount equivalent to one-tenth of the amount apportioned under this section. This section shall not be applied so as to reduce any average daily attendance apportionment below the constitutional minimum. During the year beginning September, 1953, and each year thereafter in which the Controller determines that the apportionment of any district is to be reduced as herein provided, he or she shall deduct the total amount of the annual repayment of each district in equal amounts from each installment of the apportionments made to the district; and the amount so deducted shall, on order of the Controller, be transferred from the State School Building Fund to the General Fund at the time and for the purpose provided in Section 15903.

Notwithstanding any other provision of law, taxes in the districts shall be increased sufficiently to offset the amounts by which the average daily attendance apportionments are reduced under this section. The tax increases shall be made in the manner prescribed under Section 15742 of this chapter.

Any amounts made available by this section which are not apportioned by June 30, 1953, and any recovery by substitution of apportionments made in accordance with this section shall be transferred to the Public School Building Loan Fund.

SEC. 135. Section 15735 of the Education Code is amended to read:

15735. The Controller shall, during the next fiscal year following that in which he or she determines the annual repayment as herein provided, deduct the total amount of the annual repayment of each district in equal amounts from each of the February, March, April, and May installments of the apportionments made to the district from the State School Fund under Sections 46304, 46305, and 92 or 41050, Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive, and, on order of the Controller, the amount so deducted shall be transferred to the Public School Building Loan Fund. All money transferred to the Public School Building Loan Fund under this section shall be available only for transfer to the General Fund under Section 15903.

SEC. 136. Section 15745 of the Education Code is amended to read:

15745. A public school building fund is hereby created in the county treasury in each county for each school district in the county. The county treasurer of each county shall pay into the public school

building fund of each district, exactly as apportioned by the board, all moneys received by him or her under this chapter with respect to that district.

SEC. 137. Section 15752 of the Education Code is amended to read:

15752. Whenever the Controller determines that any money apportioned to a school district has been expended by the school district for purposes not authorized by this chapter, or exceeds the final cost of the project which is authorized by this chapter to be paid therefrom, the Controller shall furnish written notice to the board, the governing board of the school district, the county superintendent of schools, the county auditor, and the county treasurer of the county whose county superintendent of schools has jurisdiction over the school district, directing the school district and the county treasurer to pay into the State Treasury the amount of the unauthorized expenditures, or the amount of the excess apportionment, as the case may be. Upon receipt of the notice, the governing board shall order the county treasurer to pay to the Treasurer, out of any moneys in the county treasury available to the school district for that purpose, the amount set forth in the notice. That amount shall, upon order of the Controller, be deposited in the State Treasury to the credit of the Public School Building Loan Fund.

It shall be the duty of the governing body and county treasurer to make the payments to the Treasurer as provided in this section, and it shall be the duty of the Controller to enforce the collection on behalf of the state.

If, upon petition of the district, the Controller determines that the amount is in excess of the amount that may be paid out of taxes levied at the maximum rate increased by any increase in the rate authorized by the electors of the district pursuant to Section 42202, without impairing essential district services, he or she may provide for the payment of the entire amount or any unpaid balance thereof in not exceeding three consecutive annual payments, commencing with the next school year. Each payment shall be an equal portion of the principal amount, plus accrued interest, and shall be paid not later than January 31st of each school year in which a payment is due. If the district fails to make the payment as specified, the Controller shall deduct the amount thereof from the February payment made to the district under Section 14041.

Deferred payments under this section shall bear interest at the same annual rate of interest as the apportionment from which the unauthorized expenditures or the amounts of excess apportionment were made.

SEC. 138. Section 15794 of the Education Code is amended to read:

15794. The Controller shall compute, in accordance with Sections 15791, 15792, and 15793, the amount of the annual repayment due the state on account of the apportionment or apportionments to each state-aided district and shall deduct from the respective

apportionments made from the State School Fund under Sections 46304, 46305, and 92 or 41050, Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive, to the state-aided district and an acquiring district the portion thereof for which each is liable under this article.

SEC. 139. Section 16042 of the Education Code is amended to read:

16042. In addition to any powers granted the board under this chapter, the board shall have authority to make apportionments to school districts for the purchase of sites and construction or purchase of temporary and portable buildings thereon, or for the construction alone, and for the cost of site preparation, including necessary utility costs, in connection with their utilization. The board may establish standards in conjunction with the State Department of Education pertaining to said sites and facilities as a condition of making the apportionments.

In addition, the board may expend moneys from the State School Building Aid Fund directly for the construction, acquisition, storage, maintenance and repair of the buildings, and administrative costs relating thereto. In the event the board may lease, sell or transfer under a lease-purchase agreement the buildings to eligible school districts or to county superintendents of schools. Any agreements with school districts may provide for the payment by the state of site preparation costs, including necessary utility costs, sufficient to permit the utilization of the facilities. Any building leased for placement on the school property or under a purchase or a lease-purchase agreement shall be deemed the construction or alteration of a school building as those terms are defined in Sections 39140 to 39155, inclusive. The consideration payable by either school districts or county superintendents for the facilities shall, as nearly as practicable, reflect an amount which would render to the state a fair return, as determined by the board, on its investment in said facilities and expenditures connected with their utilization, in the light of the benefits conferred by the agreement pertaining thereto.

The county superintendent of schools may contract with eligible school districts respecting and transfer to them by lease, lease-purchase or sale, facilities acquired by him or her from the board, provided that the agreements are not inconsistent with the rights of the state under any agreement between the superintendent and the board respecting the property. Repayments to the state as due shall be made by the county superintendent from the funds received from the affected school districts, and, if necessary to make the same when due, from the county school service fund, upon which he or she is authorized to draw requisitions for this purpose. The fund shall be reimbursed for the withdrawals from any payments made by the affected districts to the county superintendent not required when made for the discharge of any obligations of the county superintendent hereunder to the state.

No transfer of any property acquired directly by the board to any

school district by lease or otherwise shall be made either by the board or county superintendents without the approval of the State Department of Education solely as to (1) the property to be transferred, including incidental construction, if any, connected therewith, (2) whether the same shall be by lease or sale, and (3) if less than a sale, the term of the lease, including any contingent or indefinite term.

The board, affected school districts, and county superintendents of schools are authorized to do any and all things necessary to carry out the purposes of this section. Payments required of any affected school districts under any agreement entered into pursuant to this section shall be made promptly when due. Whenever the board deems it economically desirable in the state's interest to do so, it may dispose of any facilities directly acquired by it to any public or private parties in the manner and under the terms as it deems best, providing that the disposition is not inconsistent with any agreements previously entered into under this section.

The term "eligible school districts" as used in this section, shall be deemed to refer to those districts which at the time an agreement contemplated hereunder is entered into would upon proper application have been eligible to receive an apportionment under this chapter, provided that solely for the purpose of determining the eligibility the board, or the county superintendent of schools in agreements with districts hereunder, may waive construction area restrictions pertaining to apportionments under this chapter.

SEC. 140. Section 16045 of the Education Code is amended to read:

16045. (a) The board by the adoption of rules shall provide for the manner of determining the area of adequate school construction existing in an applicant school district at the time of application. The rules shall define and provide for the method of determining building areas that are to be included in whole or in part, or to be excluded from the area of existing adequate school construction.

The board may make exceptions to this section or to the rules adopted pursuant to this section when it determines that the exceptions will be for the benefit of children affected.

For the purposes of this section, "service area" may be defined as any of the following:

(b) (1) Buildings which when constructed were intended to be used for a purpose to which the provisions of Sections 39140 to 39155, inclusive, would not apply, whether or not those sections were in effect at the time when the building was constructed.

(2) Buildings which when constructed were intended to be used for a purpose to which Sections 39140 to 39155, inclusive, would apply, whether or not those sections were in effect when the building was constructed, but which building has been converted or is intended to be converted, as shown by the application, to use for purposes to which the sections would not apply. Service area may include, but is not limited to, construction used as bus garages,

maintenance shops, centrally located district storage and warehouses, custodial houses, utility shelters, administration offices, transformer vaults, and service yards.

(c) In the event that a school district has expended funds for the purpose of constructing buildings used for housing certificated employees of the district and their families, the area of the buildings and the funds expended therefor shall be accounted for in the following manner:

(1) The area of the buildings constructed or acquired with the proceeds of a tax levied under Sections 14200 to 14240, 42200 to 42247, and 45020, inclusive, shall be excluded from the building area of the district.

(2) The area of the buildings constructed or acquired with the proceeds from the sale of school district bonds prior to July 1, 1961, shall be excluded from the building area of the district, however, the bond funds shall not be considered as "eligible bonded debt service" as defined in subdivision (d) of Section 16070 and Section 16084.

(d) The board shall exclude from the building area of a district:

(1) The area of any building which is or will be used exclusively for a parent cooperative nursery education facility, and for no other purpose, and which building at the time of acquisition thereof by the district was incidental to the purchase of a schoolsite and unsuitable for classroom purposes or which was acquired by the district without expenditure of school district funds.

(2) The area of any building which is or will be used exclusively for a preschool educational program facility pursuant to Chapter 4 (commencing with Section 54400) of Part 29, or Chapter 2.5 (commencing with Section 16150) of Part 4 of Division 9 of the Welfare and Institutions Code, or any combination thereof; provided, that the building was constructed, leased, or purchased with local general funds, or federal or state funds allocated specifically for a preschool educational program.

(e) The area of adequate school construction existing in a district at the time of application shall be initially computed as all of the construction area of a district except all of the following:

(1) The areas as may be eligible for replacement under standards established by the board.

(2) The areas in an existing structurally inadequate building for which an application has been filed for structural rehabilitation or in a building previously structurally rehabilitated under either Chapter 6 (commencing with Section 15700) or Sections 16000 to 16207, inclusive, that exceeds the maximum building area allowed by Section 16044 for a number of pupils, equivalent to those that could be housed in the building after rehabilitation.

The board shall prescribe by rule the method of computing the number of pupils which could be so housed for the purposes of this subdivision.

(f) If the area of adequate school construction, when added to the minimum facilities needed by the district, results in a total

construction area in excess of the amount prescribed in Section 16044, then the board may make the following adjustments to the initial computation or the revisions thereof as the board, in its discretion, deems desirable:

(1) Service areas constructed prior to July 19, 1947, shall be excluded, except as provided in paragraph (3).

(2) Service areas constructed subsequent to July 19, 1947, shall be recomputed by multiplying the total number of square feet of said service area by the percentage determined from dividing the actual construction cost per square foot as determined by the Director of General Services by the estimated average cost per square foot of the new school facilities for which the district has made application.

(3) If any inadequate nonservice area constructed prior to July 19, 1947, is, or will be, converted to a service area, the area shall be recomputed by multiplying said area by the percentage determined by dividing the depreciated value of said area by the replacement cost as the value and cost are determined by the Director of General Services.

(4) If, after the revised computation of service areas is made as prescribed under paragraphs (1), (2), and (3), the existing and requested building area of the district is in excess of the schedule set forth in Section 16044, the existing building area of nonservice facilities may be determined on the basis of the number of pupils housed by the facilities at an allowance per pupil which is not more than 25 percent in excess of the amount per pupil prescribed in Section 16044.

The board shall prescribe by rule the method for computing the number of adequately housed pupils for purposes of this subdivision.

SEC. 141. Section 16080 of the Education Code is amended to read:

16080. The Controller shall, during the next fiscal year following that in which he or she determines the annual repayment as herein provided, deduct the total amount of the annual repayment of each district in equal amounts from each of the February, March, April, and May installments of the apportionments made to the district from the State School Fund under Sections 46304, 46305, and 41050 and 92, Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive, and, on order of the Controller, the amount so deducted shall be transferred to the State School Building Aid Fund. All money transferred to the State School Building Aid Fund under this section shall be available only for transfer to the General Fund of Section 16403.

SEC. 142. Section 16100 of the Education Code is amended to read:

16100. Whenever the Controller determines that any money apportioned to a school district has been expended by the school district for purposes not authorized by this chapter, or exceeds the final cost of the project which is authorized by Section 16024 to be paid therefrom, the Controller shall furnish written notice to the

board, the governing board of the school district, the county superintendent of schools, the county auditor, and the county treasurer of the county whose county superintendent of schools has jurisdiction over the school district, directing the school district and the county treasurer to pay into the State Treasury the amount of the unauthorized expenditures, or the amount of the excess apportionment, as the case may be. Upon receipt of the notice, the governing board shall order the county treasurer to pay to the Treasurer, out of any moneys in the county treasury available to the school district for that purpose, the amount set forth in the notice. The amount shall, upon order of the Controller, be deposited in the State Treasury to the credit of the State School Building Aid Fund, to be reapportioned by the board.

It shall be the duty of the governing body and the county treasurer to make the payments to the State Treasurer as provided in this section, and it shall be the duty of the Controller to enforce the collection on behalf of the state.

If, upon petition of the district, the Controller determines that the amount to be included in the county settlement is in excess of the amount that may be paid out of taxes levied at the maximum rate authorized by law (increased by any increase in the rate authorized by the electors of the district pursuant to Section 42202), without impairing essential district services, he or she may provide for the payment of the entire amount or any unpaid balance thereof in not exceeding three consecutive annual payments, commencing with the next school year. Each payment shall be an equal portion of the principal amount, plus accrued interest, and shall be paid not later than January 31st of each school year in which a payment is due. If the district fails to make the payment as specified, the Controller shall deduct the amount thereof from the February payment made to the district under Section 14041.

Deferred payments under this section shall bear interest at the same annual rate of interest as the apportionment from which the unauthorized expenditures or the amounts of excess apportionment were made.

SEC. 143. Section 16105 of the Education Code is amended to read:

16105. Whenever a school district receives or has received an apportionment for or toward the purchase or improvement of realty or personalty (hereafter referred to as "property") and within five years from the date of the written authorization from a duly authorized representative of the board for the expenditure therefor from state funds or from contributable district funds, sells, leases, exchanges or otherwise disposes of the property or any portion thereof without the consent of the board, the board may demand the return of the state apportionment or the portion thereof it deems proper, plus accrued interest at the prescribed rate, less any repayment made prior to the demand by the district on account of said apportionment. A district may not at any time while an

apportionment remains unpaid or noncanceled, dispose of any property acquired therefrom without the consent of the board, excepting transfers provided for by Article 15 (commencing with Section 39540) of Chapter 3 of Part 23 and existing improvements on an acquired site. The consent may be subject to the conditions as may be imposed, which may include the application of the consideration received in reduction of any apportionments previously made to the district. Any property into which the consideration from the disposition is converted shall be and remain the property of the state as if an apportionment had originally been authorized therefor.

Whenever, in the judgment of the board, a district fails to use property for the purpose or purposes for which an apportionment has been made, within not less than one nor more than five years from the aforesaid authorization, as the board shall determine, the board may demand back the return of the apportionment, or portion thereof, with interest, as specified in the preceding paragraph. The board's interpretation of the "use" in any instance, and whether or not the district has complied therewith, shall be conclusive upon the district affected after a hearing and finding of the board. In addition to the foregoing, the board may at any time subsequent to the expiration of the last mentioned period, while an apportionment remains unpaid or uncanceled, determine that a site or portion thereof, purchased in whole or in part with said apportionment is not being used for the purpose or purposes for which the apportionment was made, which determination shall be conclusive upon the district after a hearing and finding of the board. Pursuant to that determination, the board may direct the sale or other disposition of the site or portion thereof by the state or by the district and apply the proceeds, after deducting expenses it determines necessary to facilitate the disposition, in reduction of said apportionment, plus accrued interest. Any excess shall be applied in reduction of any other unpaid or noncanceled apportionments, plus interest, as the board shall direct, any remaining proceeds thereafter being payable to the district. For the purposes of the determination of disposition, the district shall, whenever directed by the board, convey record title to the site or portion thereof to the state and/or do any other acts deemed necessary by the board to facilitate the disposition or implement the terms thereof. Any disposition authorized to be made hereunder by the district shall be made in accordance with the procedure prescribed by this code for the disposition of unneeded school property, otherwise as directed by the board, provided that the consideration to be received shall be subject to the approval of the board or its delegate for that purpose.

Written notice of any demand prescribed by this section, setting forth the amount due the state pursuant thereto, shall be furnished by the board to the governing board of the school district, the county superintendent of schools, the county auditor, the county treasurer of the county whose county has jurisdiction over the school district, and the Controller. Upon receipt of the notice and demand, the

governing board of the school district shall order the county treasurer to pay to the State Treasurer, out of any moneys in the county treasury available to the school district for that purpose, the amount set forth in the notice. The amount shall, upon order of the Controller, be deposited in the State Treasury to the credit of the State School Building Aid Fund, to be reapportioned by the board.

Whenever a school district receives or has received an apportionment under this chapter for the purchase of a site which contains existing improvements, the board may require the district to dispose of the existing improvements as a condition of receiving an apportionment in the manner as the board deems proper, and contribute the net proceeds therefrom or the value of any consideration received therefor, in reduction of any apportionment. In the event that the district is not so required to dispose of the existing improvements but after receiving the apportionment subsequently disposes thereof, the net proceeds therefrom or the value of the consideration received therefor, shall be contributed by the district in reduction of any remaining indebtedness to the state under this chapter or Chapter 6 (commencing with Section 15700).

Where a district has been unable to use any building site acquired by an apportionment under this chapter because of the delay of the board in acting upon its application for an apportionment for the planning and construction of school buildings on the site, the board may withhold demand for repayment of the apportionment for the building site for a period of not less than one or more than three years after approval of the apportionment for planning and construction.

It shall be the duty of the governing body and county treasurer to make the payments to the Treasurer as provided in this section, and it shall be the duty of the Controller to enforce the collection on behalf of the state.

Whenever the consent of the board is required in this section, it may be given by written authorization of its authorized representative for that purpose. The provisions of this section, including the term "apportionment" or "apportionments," shall be deemed to be applicable to apportionments heretofore or hereafter made under this chapter or Chapter 6 (commencing with Section 15700).

SEC. 144. Section 16165 of the Education Code is amended to read:

16165. The Controller shall compute, in accordance with Sections 16161, 16163 and 16164, the amount of the annual repayment due the state on account of the apportionment or apportionments to each state-aided district and shall deduct from the respective apportionments made from the State School Fund under Sections 46304, 46305, and 92 or 41050, Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive, to the state-aided district and an acquiring district the portion thereof for which each is liable under this article (Sections 16150 to 16166, inclusive).

SEC. 145. Section 16195 of the Education Code is amended to

read:

16195. Allocations under this article may be made in the amount as may be necessary, and in the manner as to distribute the available funds equitably among school districts, giving consideration to the needs of each district and the number of children within each district who are blind, partially seeing, aphasic, deaf, hard of hearing, mentally retarded, or orthopedic or who are health impaired, multihandicapped, speech handicapped, educationally handicapped, or enrolled in development centers for the handicapped.

In computing the number of those children, there shall be included all of the following:

(a) The number of them residing in the district.

(b) The number of handicapped minors who are actually living within the district five or more days a week, although their legal residence may be outside the district and who are educated pursuant to Section 56708.

(c) The number of them who reside outside of the district, except those described in subdivision (b), and who are to be educated by the district, excluding mentally retarded minors within Section 56501 who reside within a district having an average daily attendance of 900 or more and which does not meet the requirements of Section 16058 concerning outstanding bonded indebtedness.

Allocations for housing and equipment for minors having speech defects or disorders shall be allowed in new schools constructed after July 1, 1968, and in existing schools constructed between July 1, 1933, and July 1, 1968. The housing and equipment shall be designed and provided to permit their utilization for remedial and other special services including speech therapy, speech reading (lipreading), and auditory training for the speech and hearing handicapped, screening and testing for speech and hearing defects, or both, psychological testing of exceptional children, subject matter tutoring of exceptional children, and other specialized activities required by these children. In addition to the maximum building area allowances provided in Sections 16047, 16052, 16053, and 16054, not more than an additional 200 square feet of building area shall be allowed for each new school so planned and constructed.

Each existing school, constructed between July 1, 1933, and July 1, 1968, shall be allowed not more than an additional 200 square feet of building area only for construction thereon of a new speech facility. At the option of the applicant district, the board may allocate funds to convert existing facilities or to provide a combination of new construction and conversion of existing facilities to provide housing for minors having speech defects or disorders, provided the cost of the conversion or combination of new construction and conversion does not exceed the computed cost for 200 square feet of new classroom construction based upon cost standards adopted by the board. At the further option of the applicant district, and in lieu of new building construction or conversion, the board may allocate

funds for the acquisition of mobile speech therapy facilities, provided the cost of the mobile facilities does not exceed the combined computed cost for 200 square feet of new classroom construction, based upon cost standards adopted by the board, at all schools which will be served by the mobile facility.

SEC. 146. Section 16197 of the Education Code is amended to read:

16197. Notwithstanding any other provisions of this article to the contrary, apportionments for the purchase of mobile classrooms for the education of physically handicapped pupils enrolled in integrated programs, as set forth in Section 56702, and for the education and therapy of speech-handicapped pupils may, subject to the approval of the State Department of Education, be made to any school district not otherwise eligible to receive apportionments under Article 1 (commencing with Section 16000) and Article 2 (commencing with Section 16150) for that purpose.

The State Department of Education may approve applications in those situations where mobile classrooms will be used by a county superintendent of schools required to educate physically handicapped minors pursuant to Sections 1850 and 56701. Mobile classrooms shall be used pursuant to an agreement authorized by Section 41308.

Except as otherwise provided in this section, not more than 50 percent of the amount of any apportionment made pursuant to this section shall be repaid. Repayments shall be made in the following manner: Fifty percent of the amount of the apportionment shall be repaid in full with interest by the district, in annual amounts and at an interest rate over the period as the State Allocation Board may determine, not to exceed 20 years from the date the apportionment became final. In any school year in which 50 percent or more of the pupils in average daily attendance, as determined by the county superintendent of schools, and served by the facilities are not pupils from districts other than the applicant district, the repayment for the succeeding fiscal year shall be an amount which would have been payable if the district had been required to repay 100 percent of the apportionment over that period.

The county board of supervisors of the county whose superintendent of schools uses mobile classrooms during any fiscal year shall at the time or times within the fiscal year as may be agreed upon between the county and the school district, but in any case not later than the end of the fiscal year, pay to the school district having the obligation to repay the apportionment made under this section for the purchase of mobile classrooms, an amount equal to 100 percent of the amount the district is required to repay in the fiscal year with respect to the apportionment described above.

The county board of supervisors shall raise the amount required through a general tax levy on the property within the participating districts, or through a tuition charge not to exceed one hundred sixty dollars ($160) a year per pupil by the county superintendent of

schools to the school districts of residence of pupils attending the facility including the district having the obligation to repay, or through a combination of these.

The county superintendent of schools shall notify the county board of supervisors of his or her intention to approve a school district's application for an allocation under this article before he or she approves the application.

The State Department of Education shall prepare specifications or regulations for the construction of mobile classrooms to provide for a useful life of no less than 20 years.

The use of mobile classrooms shall meet specifications described by the State Department of Education as they relate to the needs of the physically handicapped pupils being served, as set forth in Section 56701.

SEC. 147. Section 16200 of the Education Code is amended to read:

16200. Notwithstanding any provisions of this article to the contrary, the board may make apportionments to school districts not otherwise eligible to receive apportionments under Article 1 (commencing with Section 16000) and Article 2 (commencing with Section 16150) for the construction of special education facilities and the purchase of essential furniture and equipment for the purpose of either or both (1) educating those physically handicapped, mentally retarded, and educationally handicapped pupils who regularly reside in an established, licensed children's institution or family home and are being educated pursuant to Section 42902, and (2) educating handicapped pupils in development centers for handicapped pupils pursuant to Article 1 (commencing with Section 56800) of Chapter 6 of Part 30.

Only 50 percent of any amounts allocated and disbursed to a district under this section shall be repaid by the district. Each disbursement shall be repaid in 20 equal annual installments, including interest as determined by the board, and shall be computed and withheld by the Controller. The first computation of repayment of any disbursement shall be made in the fiscal year following the disbursement and shall during the next fiscal year be deducted in equal amounts from the February, March, April, and May installments of the apportionment made to the district from the State School Fund under Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive.

SEC. 148. Section 16214 of the Education Code is amended to read:

16214. For each school district which receives a grant or allocation pursuant to this article, commencing with the fiscal year next succeeding the fiscal year in which the grant or allocation was received, and for each fiscal year thereafter, the Controller shall compute an amount equal to one cent ($0.01) on each one hundred dollars ($100) of the assessed valuation of property within the district. The Controller shall, during the next fiscal year following

that in which he or she makes the computation pursuant to the preceding sentence of this section, deduct the amount so computed in equal amounts from each of the February, March, April, and May installments of the apportionments made to the district from the State School Fund under Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive; and, on order of the Controller, the amount so deducted shall be transferred to the State School Building Aid Fund. All money transferred to the State School Building Aid Fund under this section shall be available only for transfer to the General Fund under Section 17204.

The Controller shall make the computations and deductions required by this section for 30 fiscal years or until the time as the total of the amounts so deducted equal 50 percent of the amount of the grant or allocation which was made to the school district, whichever first occurs.

Notwithstanding any provision of law to the contrary, for each fiscal year for which a computation is made pursuant to the section, the maximum rate of school district tax for the school district for which the computation is made shall be increased by one cent ($0.01) per each one hundred dollars ($100) of the assessed value of property within the district and shall be in addition to any amount of tax otherwise authorized to be levied, and amounts raised through the levy of the tax may be used to offset any reduction in equalization aid resulting from the deductions made pursuant to this section.

The increase in the maximum school district tax provided by this section shall be deemed to be for bonded debt service or current capital construction. If the 1-cent rate of school district tax levied by the district causes the tax levied by the district for bonded debt service and for current capital construction in the same year to exceed the 40-cent tax amount, as that term is defined by Section 16070 or 16071, whichever is applicable, for each grade level maintained by the district, the Controller shall not make the deduction otherwise required by this section for the fiscal year.

SEC. 148.5. Section 17302 of the Education Code is amended to read:

17302. As used in this chapter:

(a) "Board" means the State Allocation Board, created by Section 7 of the Construction and Employment Act as amended.

(b) "Director" means the Director of Education.

(c) "Project" means the purpose or purposes for which a school district has applied for an apportionment or apportionments.

(d) "Apportionment" means an apportionment made under this chapter unless the context otherwise requires.

(e) "Urban district" means any school district, the boundaries of which are substantially identical to or which encompass the boundaries of a city having a population in 1960 of not less than 50,000 persons.

SEC. 148.7. Section 17313 of the Education Code is amended to read:

17313. Each school district which desires an apportionment shall submit through its governing board to the board an application therefor in the form and number of copies as the board shall prescribe. Each copy of the application shall be accompanied by a statement of the estimated cost of the project certified by an architect or structural engineer, and by layout plans showing the entire construction project for which the district desires an apportionment.

Estimates of costs for new construction or equipment appearing in an application shall not exceed typical current costs of comparable new construction or equipment by school districts in the same area not receiving an apportionment under this chapter, as determined by the Director of General Services, or if there has been no new construction by school districts in the area, the estimates of costs shall not exceed the reasonable current cost of similar construction or equipment in the area as determined by the Director of General Services.

A school district may at any time file an application or amend or supplement an application. Upon receipt of any application, the Director of General Services shall as promptly as possible prepare a report and recommendation with respect to the application after having received recommendations from the director in respect to any matter which is subject to the jurisdiction or approval of the director or State Department of Education. The board shall, subject to the provisions of this chapter, approve, in whole or in part, or reject each application referred to it by the Director of General Services. If the board approves of the application, either in whole or in part, it shall, by a resolution adopted by it, apportion to the district from the Urban School Construction Aid Fund the amount applied for, or a portion thereof as the board may determine appropriate; provided, that it may order that the apportionment or any part thereof shall be paid in progressive installments at times and under conditions as it may then prescribe.

SEC. 149. Section 17900 of the Education Code is amended to read:

17900. The Legislature finds and declares that it is in the interest of the state and of the people thereof for the state to aid school districts in finding cost-effective methods of conserving energy in school buildings maintained by the districts. The Legislature also finds that while many districts may desire to participate in energy conservation programs designed to reduce the steadily rising costs of meeting the energy needs of school buildings, that the costs involved in improving existing school facilities to become more energy efficient are often prohibitive.

It is the intent of the Legislature in enacting this part to encourage school districts to retrofit school buildings so as to conserve energy and reduce the costs of supplying energy.

SEC. 150. Section 17901 of the Education Code is amended to read:

17901. (a) School districts may borrow funds from federal or state regulated financial institutions for the purposes of design and construction costs associated with retrofitting school buildings to become more energy efficient. School districts shall only be authorized to borrow an amount which does not exceed that which can be repaid from energy cost avoidance savings accumulated from the improvement of school facilities.

(b) Any savings and loan association may make loans or advances of credit pursuant to subdivision (a) in an amount not in excess of 5 percent of its total assets. This investment may be in addition to any other investment savings and loan associations are permitted to undertake under Section 6705.7 of the Financial Code.

SEC. 151. Section 17902 of the Education Code is amended to read:

17902. To the extent that these services are available, school districts shall arrange for the preaudit and postaudit of school buildings by investor-owned or municipal utility companies or by independent energy audit companies or organizations which are recognized by federal or state regulated financial institutions. The preaudit shall identify the type and amount of work necessary to retrofit the buildings and shall include an estimate of projected energy savings. The postaudit shall be conducted upon completion of the retrofitting of the school buildings to ensure that the project satisfies the recommendations of the preaudit.

SEC. 152. Section 17903 of the Education Code is amended to read:

17903. School districts taking action under this article shall contract with qualified businesses capable of retrofitting school buildings. To the extent that lists of qualified businesses are made available to school districts by investor-owned or municipal utility companies or federal or state regulated financial institutions, school districts may utilize the services of these businesses.

SEC. 153. Section 18100 of the Education Code is amended to read:

18100. The governing board of each school district shall provide school library services for the pupils and teachers of the district by establishing and maintaining school libraries or by contractual arrangements with another public agency.

SEC. 154. Section 18101 of the Education Code is amended to read:

18101. The State Board of Education shall adopt standards, rules and regulations for school library services.

SEC. 155. Section 18102 of the Education Code is amended to read:

18102. Libraries may be established and maintained under the control of the governing board of any school district.

SEC. 156. Section 18103 of the Education Code is amended to read:

18103. The libraries shall be open to the use of the teachers and

the pupils of the school district during the schoolday. In addition, the libraries may be open at other hours, including evenings and Saturdays, as the governing board may determine. Libraries open to serve students during evening and Saturday hours shall be under the supervision of certificated personnel. Certificated personnel employed to perform full-time services in an elementary, junior high, or high school during the regular schoolday, may supervise, but shall not without their consent be required to supervise, a school library on evenings or Saturdays. If a person agrees to supervise the school library during Saturday or evening hours, he or she shall be compensated in the amounts determined by the governing board of the district as indicated on the salary schedule.

SEC. 157. Section 18110 of the Education Code is amended to read:

18110. County boards of education may adopt lists of books and other library materials for districts not employing a superintendent of schools or a librarian for full time. The lists may be distributed to all school districts in a county for use in the selection of books and other library materials.

SEC. 158. Section 18111 of the Education Code is amended to read:

18111. The governing board of any school district may exclude from schools and school libraries all books, publications, or papers of a sectarian, partisan, or denominational character.

SEC. 159. Section 18120 of the Education Code is amended to read:

18120. The governing board of a school district maintaining its own library or libraries may appoint a librarian or librarians to staff the libraries provided they qualify as librarians pursuant to Section 44868.

SEC. 160. Section 18121 of the Education Code is amended to read:

18121. The governing board of a school district is accountable for the proper care and preservation of the school libraries of the district, and may make all necessary rules and regulations not provided for by the State Board of Education, or the Superintendent of Public Instruction and not inconsistent therewith.

SEC. 161. Section 18122 of the Education Code is amended to read:

18122. The governing board of a school district shall, on or before August 31st, in each year, report to the State Department of Education on the condition of school libraries, for the year ending June 30th preceding. The report shall, in addition to other matters deemed expedient by the governing board or the librarians, contain the statistical and other information as is deemed desirable by the State Department of Education. For this purpose the State Department of Education may send to the several districts under its supervision, instructions or question blanks so as to obtain the material for a comparative study of library conditions in the state.

SEC. 163. Section 18131 of the Education Code is amended to read:

18131. Notwithstanding any other section of this article to the contrary, school districts may purchase textbooks, reference books, periodicals, and other publications approved by any board authorized to adopt these materials in addition to those furnished by the county library.

SEC. 164. Section 18132 of the Education Code is amended to read:

18132. All funds transferred to a county library pursuant to this article shall be used by the county library only for: (a) the acquisition of books and other materials as are adopted by the body authorized to adopt courses of study for the school districts which have entered into an agreement for the provision of school library services by the county library, and (b) the care and distribution of the books and other materials to schools which are eligible to receive school library services from the county library.

SEC. 165. Section 18134 of the Education Code is amended to read:

18134. In any city conducting a public library owned and managed by the city, the governing board of any school district may enter into an arrangement with the governing body of the public library of the city similar to the arrangement authorized by this article between the governing boards of any school district and the county library.

SEC. 166. Section 18137 of the Education Code is amended to read:

18137. Whenever the governing board of a school district enters into an agreement with a county or city library for school library services the district shall provide for the care and custody of and assume responsibility for the books and other property delivered to it subject to the rules and regulations of the county or city library and the terms of the agreement.

SEC. 167. Section 18138 of the Education Code is amended to read:

18138. With the consent of the county superintendent of schools the governing board of the school district may agree with the proper authorities of the county or city to terminate the affiliation of the district with the county or city library. Either the governing board of the school district or the governing body of the county library may initiate termination proceedings. The proceedings shall be terminated prior to the first day of February of the school year in which begun and may provide for either of the following:

(a) The complete withdrawal of affiliation effective on the first day of July next succeeding.

(b) A gradual withdrawal over a period of not to exceed three years beginning on the first day of July next succeeding the termination of proceedings.

The governing board of the school district shall enter into a written

agreement with the proper authorities of the city or county providing for the terms of the gradual withdrawal, including the period to be covered, not to exceed three years, the amount of payment for each year, and the amount of service to be rendered.

Unless otherwise provided in the withdrawal agreement, the books purchased by a district during the period of the withdrawal become the property of the district.

All books purchased by a district shall be approved by the body authorized to adopt courses of study for the school districts of the county.

SEC. 168. Section 18139 of the Education Code is amended to read:

18139. With the consent of the county board of education, in those counties in which the county superintendent of schools performs library services for the school library of any district, the governing board of the school district may agree with the proper authorities of the county to terminate the affiliation of the district with the county superintendent of schools with respect to library services. The proceedings shall be terminated prior to the first day of February of the school year in which begun and may provide for either of the following:

(a) The complete withdrawal of affiliation effective on the first day of July next succeeding.

(b) A gradual withdrawal over a period of not to exceed five years beginning on the first day of July next succeeding the termination of proceedings.

The county board of education shall adopt rules and regulations governing a gradual withdrawal, including the period to be covered, not to exceed five years, the amount of payment for each year, and the amount of service to be rendered. The terms of the gradual withdrawal shall comply with the rules and regulations.

SEC. 169. Section 18170 of the Education Code is amended to read:

18170. The governing board of any school district shall expend the library fund, together with the money that is added thereto by donation, in the purchase of school apparatus and books for a school library, including books for supplementary work.

SEC. 170. Section 18171 of the Education Code is amended to read:

18171. No warrant shall be drawn by the superintendent of schools upon the order of any governing board of any school district against the library fund of any district unless the order is accompanied by an itemized bill, showing the books and apparatus, and the price of each in payment of which the order is drawn, and unless the books and apparatus, except in the case of library books and apparatus purchased by a district employing a district superintendent of schools or a school librarian for full time, have been adopted by the county, city, or city and county board of education.

SEC. 171. Section 18172 of the Education Code is amended to read:

18172. All orders of the governing board of any school district for books or apparatus shall in every case be submitted to the superintendent of schools of the county, city, or city and county, respectively, for his or her approval, before the books or apparatus shall be purchased.

SEC. 172. Section 19901 of the Education Code is amended to read:

19901. Before making the deposit, the board of supervisors shall obtain from the board of trustees or authorities in charge of the free public library, or the State Librarian, as the case may be, an agreement that it will properly preserve and care for the newspaper files, and make them accessible to the public.

SEC. 174. Section 22200 of the Education Code is amended to read:

22200. The system is managed by the Teachers' Retirement Board. The members of the board are as follows:

(a) The Superintendent of Public Instruction.

(b) The Controller.

(c) The Treasurer.

(d) The Director of Finance.

(e) One member who, at the time of appointment, is a member of the governing board of a school district or a community college district.

(f) Three members of the State Teachers' Retirement System, as follows:

(1) Two members who, at time of appointment, are classroom teachers in grades kindergarten through 12.

(2) One member, who at time of appointment, is a community college instructor with expertise in the areas of business or economics or both business and economics and who shall be appointed by the Governor for a term of four years from a list submitted by the Board of Governors of the California Community Colleges.

(g) A retirant of the system.

(h) One officer of a life insurance company appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(i) One officer of a bank or a savings and loan institution who has had at least five years of broad professional investment experience handling various asset classes such as stocks, bonds, and mortgage investments and who shall be appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(j) One member representing the public, appointed by the Governor for a term of four years, subject to confirmation by the Senate.

The members of the board provided by subdivisions (e) and (g) and paragraph (1) of subdivision (f) shall be appointed by the

Governor for four-year terms from a list submitted by the Superintendent of Public Instruction.

The members of the board shall annually elect a chairperson and vice chairperson.

SEC. 176. Section 22504 of the Education Code is amended to read:

22504. Any person who is a member who subsequently is employed by the same or a different school district or community college district or by a county superintendent, to perform duties which require membership in a different public retirement system in this state, shall continue to be a member, unless he or she elects, in writing and files in the office of this system, within 90 days after the entry, not to continue as a member in his or her new position. This section shall also apply to changes in employment effected on or after January 1, 1976, if an election is made on or before April 1, 1977.

SEC. 178. Section 24806 of the Education Code is amended to read:

24806. (a) A district retirement salary plan established under Sections 24800 to 24812, inclusive, in any school district or districts, in which the average daily attendance of all districts combined is in excess of 200,000, governed by the same governing board, may be discontinued by the governing board of the district or districts, with the consent of the majority of the active members of the system expressing their desires with respect to the discontinuance of the plan evidenced in the manner as the governing board may prescribe; but no discontinuance of any retirement plan shall be effective for any purpose unless provision is made for retirement allowances for active and retired employees of the district as provided in subdivisions (b), (c), (d), and (e).

(b) (1) Active and retired employees of the district or districts who otherwise would be members of the plan, other than teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System or who were so employed prior to retirement, shall be made members and beneficiaries, respectively, of the Public Employees' Retirement System according to Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, including transfer to the system of the accumulated contributions of the employees, together with any other assets of the plan as may be determined.

(2) With respect to persons who are members of the plan at its discontinuance, it shall be provided in the contract making the employees members of the Public Employees' Retirement System, that their respective rates of contribution thereunder shall be based on the age at the nearest birthday on July 1, 1944, or at the respective later effective dates of their membership in the plan, all instead of the age at the nearest birthday at the effective date of membership in the employees' system.

(3) Each employee of the district or districts who is included in

the contract, but who during all or part of his or her employment in a status requisite for membership in the plan was not a member thereof, because of his or her election under an available option, or who failed to redeposit upon reentry into membership contributions previously withdrawn, shall have the right to elect by written document filed with the Board of Administration, Public Employees' Retirement System, at any time within 90 days after the date upon which the notice of the right to make the election is mailed by the system to the member's latest address on file in the office of the system, and prior to the date of retirement, to contribute to the system, subject to minimum payments fixed by the board of administration, and in one or more sums, or in not to exceed 60 monthly payments, an amount which, when added to his or her accumulated contributions, including interest, transferred as required in paragraph (1), will make a total amount equal to the accumulated contributions, including interest, which would have been credited to him or her in the plan, if he or she had never elected not to be a member thereof, or if he or she had redeposited the withdrawn contributions upon reentry, as the case may be. The employee shall pay to the Public Employees' Retirement System interest on the unpaid balance of the amount payable to the system, beginning with the date of discontinuance of the plan at the rate of interest currently used from time to time under the system. If the employee elects to make, and makes the contributions, and pays the interest, but not otherwise, he or she shall receive credit under the employees' system, as state service, for all the service rendered while he or she was not a member of the plan, because of his or her optional exclusion, or for all service upon which the withdrawn contributions were based, and for the purpose of paragraph (2) shall be considered as a member of the plan at its discontinuance and from November 1, 1937, or later beginning date of the service. Regardless of whether the contributions are made, the employee shall receive credit for service with which he or she was credited or would have been credited if he or she had been a member, as prior service under the plan. The contributions under this paragraph shall be added to and administered in the same manner as the contributions transferred under paragraph (1).

(4) Service rendered by active employees, who are made members of the Public Employees' Retirement System, prior to the assumption by the district or districts of the function under which the service was rendered, such as, but not limited to, cafeterias and student body activities, shall be credited under the employees' system; provided, the service qualified for credit under the discontinued plan.

(5) The contract making the active employees members of the Public Employees' Retirement System, shall include the employees with respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement System, as provided in Section 20491 of the Government Code, and also with

respect to service rendered in a status in which they are eligible for membership, but which is no longer credited under the retirement system, and the service shall be credited in the same manner applicable to service otherwise qualifying for credit.

(6) Retirement allowances being paid under the discontinued plan to retired employees of the district or districts, who are made beneficiaries of the Public Employees' Retirement System, shall be changed by action of the governing board of the districts, effective at the discontinuance of the plan, to retirement allowances calculated on the basis of service used in the calculation of the respective allowances under the plan, and average annual salary earnable during the highest three consecutive years of creditable service, calculated according to the methods used at the date of discontinuance, under the plan in determining salary earnable, but excluding any salary based on overtime as provided in Section 20025.2 of the Government Code, but otherwise according to the formulae under the employees' system which apply to active employees who are made members thereof. The changed allowances shall be paid to beneficiaries for time commencing on the date they are made beneficiaries of the employees' system. No allowance shall be reduced by the change.

(7) If two or more districts under the control and management of a single governing board are participants in the plan, one contract between the board of administration and the governing board may include all the districts. The governing board may apportion the total contributions required under the contract, among the districts on the basis of total salaries upon which the contributions are computed, and on the basis of other pertinent information.

(8) Paragraph (1) of this subdivision notwithstanding, the contract making active employees members of the Public Employees' Retirement System, shall include teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System, with respect to service rendered in a status in which they would have been eligible for membership in the Public Employees' Retirement System, if the district or districts by which they were employed had been participating in that system under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code. Contributions deducted from salary earned by the employees in that service, together with credited interest, and standing to the credit of the employees at the effective date of discontinuance of the plan, shall be subject to paragraph (1), in the same manner as they would have been so subject if the employees had been employed at the date of the discontinuance, in a status which was not requisite for membership in the State Teachers' Retirement System. The employees shall be members of the Public Employees' Retirement System with the same effect, but only with respect to that service, as if they had been employed in a status which would have qualified them for membership under other paragraphs of this section. The employees shall continue in membership and

shall be entitled to benefits in the same manner as if they individually were credited with at least five hundred dollars ($500) in accumulated contributions. In the computation of the members' benefits under the Public Employees' Retirement System, their compensation earnable while they are members of the State Teachers' Retirement System shall be taken into consideration.

(c) Notwithstanding any other provisions of Sections 35161, 35162, Article 1 (commencing with Section 7000) of Chapter 1, Article 1 (commencing with Section 7100) of Chapter 2, of Part 5, Article 2 (commencing with Section 10010) of Chapter 1, Chapter 4 (commencing with Section 10300) of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, and Part 25 (commencing with Section 44000), contributions to the discontinued district retirement plan made by teachers and other persons employed by the district or districts in a status requisite for membership in the State Teachers' Retirement System standing to their individual credit at the date of discontinuance of the district retirement plan shall be deposited forthwith in the Retirement Annuity Fund with credited interest, to be applied on the amount due from the teachers, but not to exceed the amount so due. Likewise an amount equal to the actuarial equivalent of the annuity portion of the retirement allowance to which the respective retired teachers and other persons employed by the district or districts, prior to retirement, in a status requisite for membership in the State Teachers' Retirement System were entitled under the plan, based on the interest rate and mortality tables used in its determination, shall be deposited in the Retirement Annuity Fund, to be applied on the amount due from the respective retired teachers, but not to exceed the amount so due. Any excess of the contributions with credited interest or the actuarial equivalents, as the case may be, over the respective amounts due under those sections, shall be paid forthwith to the respective active and retired teachers and other persons. Further amounts, if any, due under those sections after the deposits, shall be paid to the Retirement Annuity Fund by the respective active and retired teachers and other persons. If any of the teachers or other persons who is not retired, is not entitled to credit under the State Teachers' Retirement System for all or part of his or her service credited under the plan, or if any of the retired teachers or other persons is not entitled to a retirement allowance from the system, either before or after the discontinuance, the provisions of this subdivision about contributions and credited interest or about the actuarial equivalent of annuity portions of retirement allowances, as the case may be, shall not apply to him or her with respect to service which is not credited under the state system, until and unless he or she becomes entitled to credit for that service or to an allowance from the state system, based on service which was credited to him or her under the discontinued plan. The balance of the assets held in the various funds of the discontinued district retirement plan after

the transfers, deposits, and payments required by this section, or after establishment of reserves from which the transfers, deposits, and payments shall be made, shall be delivered to the district or districts in which the plan is discontinued.

(d) The district or districts in which the district retirement plan is discontinued shall pay monthly to teachers and other persons employed by the district or districts, prior to retirement, in a status requisite for membership in the State Teachers' Retirement System who were retired prior to the date of the discontinuance an amount equal to the amount by which the retirement allowance to which any of the retired teachers or other persons was entitled under the plan exceeds the increase in the teacher's or other person's retirement allowance under the State Teachers' Retirement System resulting from the discontinuance. If the amount payable to any teacher or other person, under the sentence next preceding, is less than two dollars ($2), the district or districts may pay, in lieu of that amount, one amount which shall be actuarially equivalent to the monthly amount thereafter payable, according to the interest rate and mortality table used in the determination of the teacher's or other person's retirement allowance under the district retirement plan. The payment of the actuarially equivalent amount shall discharge fully the district's liability to the teacher or other person under this subdivision. The arrangement under which the amounts are paid by the district shall not be considered to be a local retirement system for the purposes of Chapter 1 (commencing with Section 22000) to Chapter 15 (commencing with Section 23400), inclusive, nor shall the amount be taken into account in the calculation of retirement allowances under the State Teachers' Retirement System. If any of the teachers or other persons is not entitled to a retirement allowance from the State Teachers' Retirement System, either before or after discontinuance, the district or districts shall pay monthly to him or her, an amount equal to his or her retirement allowance under the plan prior to the discontinuance. If any teacher or other person has left the service of the district or districts, and is in a status under the plan, which if continued would qualify him or her for a retirement allowance without his or her return to that service, but is in a status otherwise which would not qualify him or her for retirement under the state system, the district or districts shall pay monthly to the teacher or other person, beginning at the date upon which he or she would have qualified for service retirement under the plan, an amount equal to the retirement allowance for which he or she would have qualified if the plan had not been discontinued. If any teacher or other person has credit under the plan for service which does not qualify for credit under either the State Teachers' Retirement System or Public Employees' Retirement System, the district or districts shall pay monthly to the teacher or other person, beginning on the date upon which he or she would have qualified for service retirement under the plan, an amount equal to the retirement allowance for which he or she would

have qualified on the basis of that service if the plan had not been discontinued. If the individual at a later date becomes entitled to a retirement allowance from the state system, based on service which was credited to him or her under the discontinued plan, the monthly payments shall cease, and he or she shall become subject forthwith to subdivision (c), and the first four sentences of this subdivision, in the same manner as he or she would have been subject, if he or she had been entitled to a retirement allowance at the date of discontinuance, but calculation of actuarial equivalents and amounts payable shall be made as of the later date.

(e) If any person who was retired prior to the discontinuance from a position requisite for membership in the State Teachers' Retirement System, under a district retirement salary plan which is discontinued pursuant to this section, elected either under the plan or under the system, but not under both, to have the retirement allowance modified according to an option under which he or she would receive a smaller allowance and provide a benefit for his or her beneficiary, the person shall have the right, to be exercised not later than 60 days after the discontinuance of the plan, to change his or her election under the State Teachers' Retirement System with respect to the options. Any computations of actuarial equivalent under a changed election shall be made as of the date of discontinuance of the plan, and no adjustment shall be included in the computation on account of retirement allowance payments made prior to that date.

SEC. 179. Section 24923 of the Education Code is amended to read:

24923. In lieu of the authorizations or requirements provided for in Sections 24920 and 24922, the plan may provide only that the retirement salary shall be based on service rendered prior to the effective date of the plan or prior to July 1, 1944, and shall be an amount which, when added to the retirement allowance the respective member is entitled to receive under the State Teachers' Retirement System, shall equal a sum of not less than one hundred dollars ($100) per month and Sections 24920 and 24922 shall not be applicable thereto. The costs of the benefits under such a plan may be met by the contributions of the districts alone, Sections 35161, 35162, Article 1 (commencing with Section 7000) of Chapter 1, Article 1 (commencing with Section 7100) of Chapter 2 of Part 5, Article 2 (commencing with Section 10010) of Chapter 1, Chapter 4 (commencing with Section 10300) of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, and Part 25 (commencing with Section 44000) to the contrary notwithstanding, and only teachers who have credit for service rendered prior to said date shall be subject to the plan.

SEC. 180. Section 24924 of the Education Code is amended to read:

24924. (a) A plan established under this chapter which is

intended to provide supplemental benefits only on account of service rendered before July 1, 1944, may be discontinued by the governing board of the district, subject to the following conditions:

(1) Notwithstanding Sections 35161, 35162, Article 1 (commencing with Section 7000) of Chapter 1, Article 1 (commencing with Section 7100) of Chapter 2 of Part 5, Article 2 (commencing with Section 10010) of Chapter 1, Chapter 4 (commencing with Section 10300) of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, and Part 25 (commencing with Section 44000), any teacher who is not retired on July 1, 1956, shall be entitled to the contributions made by him or her to the discontinued plan with interest credited in accordance with the rules and regulations of the local retirement plan to and including June 30, 1957. Likewise, a teacher who retired prior to July 1, 1956, shall be entitled to a refund equal to the actuarial equivalent, at his or her attained age, of the annuity which would have been provided by the total contributions required of the member under the system, based on interest and mortality tables currently in use, less the amount of any contributions remaining unpaid on the date of discontinuance. The amount to which any teacher is entitled under this section shall be paid to him or her within 90 days of his or her request in writing on a form provided by and filed with the local retirement system. All requests shall be filed prior to July 1, 1959.

(2) The district in which the plan is discontinued shall pay monthly to teachers, who were retired prior to the date of the discontinuance, an amount equal to the amount by which the retirement allowance to which any said retired teacher was entitled under said plan exceeds the increase in said teacher's retirement allowance under the State Teachers' Retirement System after said discontinuance. In lieu of the monthly payment, the district may elect to pay in a single sum the amount which shall be the actuarial equivalent to the monthly amount thereafter payable, according to the interest rate and mortality table currently in use under said plan. Payment of the amount shall discharge fully the district's liability to the teacher under this subdivision. The arrangement under which the amounts are paid by said district shall not be considered to be a local retirement system for the purposes of Chapter 1 (commencing with Section 22000) to Chapter 27 (commencing with Section 24600), inclusive, nor shall said amount be taken into account in the calculation of the retirement allowances under the State Teachers' Retirement System.

(b) Any person who was retired prior to July 1, 1956, from a position requisite for membership in the State Teachers' Retirement System, under a district supplemental retirement salary plan which has been discontinued pursuant to this section, and elected either under said plan or under said system, but not under both, to have a portion of his or her retirement allowance modified according to an

option under which he or she would receive a smaller allowance and provide for a benefit for his or her beneficiary, said person shall have the right, to be exercised not later than 60 days after July 5, 1956, to change his or her election under the State Teachers' Retirement System with respect to said options. Any computations of actuarial equivalents under a changed election shall be made as of the said effective date, and no adjustment shall be included in the computation on account of retirement allowance payments made prior to that date.

(c) When any local retirement plan is discontinued under this section, all funds remaining in the district retirement fund of the local system shall be transferred to the general fund of the school district in which the plan is discontinued. Thereafter any payments to meet continuing obligations of the district arising from the establishment or discontinuance of the plan shall be paid from the general fund of the district.

SEC. 180.5. Section 32033 of the Education Code, as amended by Section 1 of Chapter 1118 of the Statutes of 1987, is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers at a price that shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 181. Section 32200 of the Education Code is repealed.

SEC. 182. Section 32300 of the Education Code is amended to read:

32300. All printing or binding required by the Superintendent of Public Instruction or the State Board of Education, or by any educational institution, except the California Community Colleges and the University of California, supported entirely out of state funds, and all school registers and blank forms prescribed by the Superintendent of Public Instruction for the use of officers charged with the administration of the laws relating to the public schools, including blank teachers' certificates, and diplomas of graduation from elementary schools in districts not governed by city boards of education, shall be performed by the Department of General Services in the form and manner and at the prices of other state printing, and be paid for in like manner.

SEC. 183. Section 32371 of the Education Code is amended to read:

32371. The following definitions govern the interpretation of this article:

(a) "Educational agency" means any school district, county office of education, or campus of the California State University and Colleges.

(b) "Paper recycling program" means, (1) the provision of specially marked containers which are intended to receive either all grades or only some grades of postconsumer wastepaper but which

are not intended to receive other forms of postconsumer waste, (2) publicity directed at all persons who frequent buildings with the containers encouraging those persons to deposit wastepaper in the containers, and (3) the collection of all paper deposited in the containers for the purpose of recycling.

(c) "Postconsumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(d) "Recycled paper" means all paper and woodpulp products with not less than 50 percent of its total weight consisting of secondary and postconsumer waste and with not less than 10 percent of its total weight consisting of postconsumer waste.

(e) "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

SEC. 184. Section 32372 of the Education Code is amended to read:

32372. (a) Each school district may, and is encouraged to, establish and maintain a paper recycling program in all classrooms, administrative offices, and other areas owned or leased by the school district where a significant quantity of wastepaper is generated or may be collected.

(b) Each campus of the California State University and Colleges may, and is encouraged to, establish and maintain a paper recycling program in administration offices and other areas owned or leased by the campus, including areas frequented by students, where a significant quantity of wastepaper is generated or may be collected.

(c) In establishing paper recycling programs, school districts, and campuses of the California State University and Colleges shall attempt to cooperate with existing paper recycling programs.

(d) Nothing in this article shall limit or supersede any other requirement of law imposing a paper recycling program on school districts or the California State University and Colleges.

SEC. 185. Section 33031 of the Education Code is amended to read:

33031. The board shall adopt rules and regulations not inconsistent with the laws of this state (a) for its own government, (b) for the government of its appointees and employees, (c) for the government of the day and evening elementary schools, the day and evening secondary schools, and the technical and vocational schools of the state, and (d) for the government of other schools, excepting the University of California, the California State University, and the California Community Colleges, as may receive in whole or in part financial support from the state.

The rules and regulations adopted shall be published for distribution as soon as practicable after adoption.

SEC. 186. Section 33113 of the Education Code is amended to

read:

33113. The Superintendent of Public Instruction shall prescribe regulations under which contracts, agreements, or arrangements may be made with agencies of the federal government for funds, services, commodities, or equipment to be made available to schools under the jurisdiction of the State Board of Education and the Superintendent of Public Instruction.

SEC. 187. Section 33117 of the Education Code is amended to read:

33117. The Director of Education may enter into agreements with agencies of the federal government, county superintendents of schools, county boards of education, any school district, and state college foundations or other auxiliary organizations, including those established pursuant to Section 90000 for the performance of any services for those agencies by any school under the jurisdiction of the State Department of Education. All money received under any agreement, except recovery of contributions to the Public Employees' Retirement Fund, is hereby appropriated for the support of the school in addition to other funds as may be appropriated therefor by the Legislature.

SEC. 188. Section 33117.5 of the Education Code is amended to read:

33117.5. (a) Adult education programs and regional occupational programs operated by school districts and county offices of education that have contracted with the Superintendent of Public Instruction pursuant to subdivision (b) shall provide services to welfare recipients referred by county welfare departments in accordance with paragraph (6) of subdivision (b) of Section 11320.5 of the Welfare and Institutions Code. These services shall include an evaluation of the individual's educational and training needs for purposes of paragraph (6) of subdivision (b) of Section 11320.5 of the Welfare and Institutions Code and the preparation of a related education and training plan reflecting these needs. The plan shall specify the educational and training services to be provided and the length of time services are to be provided, and shall assure access to those services.

(b) The Superintendent of Public Instruction shall identify school districts or county offices of education which can best accommodate welfare recipients for whom vocational education, adult education, and English as a second language is specified in contracts required by Sections 11320.4 and 11320.5 of the Welfare and Institutions Code. The superintendent shall enter into contracts with each consenting district or county office where necessary, so that the contracting district or county office shall provide open entry-open exit skills training and education for welfare recipients who need this training to enable counties to meet their goals for plans developed pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(c) Allocations to the Superintendent of Public Instruction of

funds available under Section 202(b)(1) of the federal Job Training Partnership Act shall be used for purposes of this section to the extent the superintendent determines necessary.

The Superintendent of Public Instruction shall allocate these funds directly to those providers of educational and training services delivered in accordance with this section. The Superintendent of Public Instruction shall allocate to community college districts and the Board of Governors of the California Community Colleges the funds as are determined necessary pursuant to Section 71050. The Superintendent of Public Instruction may allocate these funds to service delivery areas which have agreements with private schools and organizations to provide educational and training services under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. These funds shall be allocated in accordance with the coordination criteria of the coordination and special services plan as provided in Section 10524 of the Unemployment Insurance Code, and according to the priority order of eligible persons for these funds as provided in Sections 15010 and 15011 of the Unemployment Insurance Code.

SEC. 189. Section 35501 of the Education Code is amended to read:

35501. On and after January 1, 1981, this chapter and Chapter 4 (commencing with Section 35700) shall apply, and Part 3 (commencing with Section 4000), except Article 4 (commencing with Section 4290) of, and Article 5 (commencing with Section 4310) of Chapter 2 of, Part 3, shall not apply, to an action to reorganize school districts.

SEC. 190. Section 39214.5 of the Education Code is amended to read:

39214.5. "School building" as used in this article excludes any building operated by an official or board of a public entity for purposes other than educational, notwithstanding any educational use thereof incidental to the other primary purpose.

For purposes of this section, a public entity includes, but is not limited to, a city, city and county, county, or special district, but does not include a school district or county superintendent of schools.

SEC. 191. Section 39308 of the Education Code is amended to read:

39308. Before entering into a lease or agreement pursuant to this article, the governing board of the district shall call, hold, and conduct an election in the manner provided in Section 42202, except that the ballot used in the election shall contain substantially the words: "Shall the governing board of the _____ District purchase (a site, sites) prepare plans and specifications, [the reference to the site or sites and plans and specifications shall not be included if, prior to calling the election, the governing board of the district has acquired a site or sites or proposes to lease a site or sites and has prepared plans and specifications] and lease (a site and, sites and) (a building, buildings) to be constructed for use by the school district

[designating the location of the site or sites on which the building or buildings will be constructed and generally describing the building or buildings], and, for such purposes, shall the maximum tax rate of the district be increased by not to exceed _____, such increase to be in effect in the _____ District for the years 19__ to ____, be authorized and the amount of such increase used solely and exclusively for such purposes?"

SEC. 192. Section 39383 of the Education Code is amended to read:

39383. The governing board of any school district, constituting the governing body of an elementary district, a high school district, or any two of those districts, may sell any building, structure, or other fixture, belonging to one of its respective districts to another district governed by it, for an amount to be fixed by the governing body, without advertisement for or receipt of bids or compliance with any other provisions of this code.

Whenever any property is sold under this section it shall be removed from the premises of the district selling it within 60 days from the date of the sale.

SEC. 193. Section 39830 of the Education Code is amended to read:

39830. A schoolbus is any motor vehicle designed, used, or maintained for the transportation of any school pupil at or below the 12th-grade level to or from a public or private school or to or from public or private school activities, except the following:

(a) A motor vehicle of any type carrying only members of the household of the owner thereof.

(b) A motortruck transporting pupils who are seated only in the passenger compartment, and a passenger vehicle designed for and when actually carrying not more than 10 persons, including the driver, except any vehicle or truck transporting two or more handicapped pupils confined to wheelchairs.

(c) A motor vehicle operated by a common carrier, or by and under exclusive jurisdiction of a publicly owned or operated transit system, only during the time it is on a scheduled run and is available to the general public or on a run scheduled in response to a request from a handicapped pupil confined to a wheelchair, or from a parent of the handicapped pupil, for transportation to or from nonschool activities; provided, that the motor vehicle is designed for and actually carries not more than 16 persons and the driver, is available to eligible persons of the general public, and the school does not provide the requested transportation service.

(d) A school pupil activity bus as defined in Section 39830.1.

(e) A motor vehicle operated by a carrier licensed by the Interstate Commerce Commission which is transporting pupils on a school activity entering or returning to the state from another state or country.

(f) A state-owned motor vehicle being operated by a state employee upon the driveways, paths, parking facilities, or grounds

specified in Section 21113 of the Vehicle Code that are under the control of a state hospital under the jurisdiction of the State Department of Developmental Services where the posted speed limit is not more than 20 miles per hour. The motor vehicle may also be operated for a distance of not more than one-quarter mile upon a public street or highway that runs through the grounds of a state hospital under the jurisdiction of the State Department of Developmental Services, if the posted speed limit on the public street or highway is not more than 25 miles per hour and if all traffic is regulated by posted stop signs or official traffic control signals at the points of entry and exit by the motor vehicle.

SEC. 194. Section 41303 of the Education Code is amended to read:

41303. The Superintendent of Public Instruction shall report to the Controller, on or before the 25th day of September of each year, the total average daily attendance during the preceding fiscal year credited to all kindergarten, elementary, high school, and adult schools in the state and to county school tuition funds.

SEC. 195. Section 41332 of the Education Code is amended to read:

41332. The Superintendent of Public Instruction shall, on or before February 20th of each year, apportion to each elementary school district, high school district, county school service fund, and county school tuition fund the total amounts allowed to them under Sections 14054, 14057, 14058, 41790, 41800, 41810, 41811, 41840, 41841, 41863, 41866, 41882, 41884, 41885, 41886, 41888, 41950, 41970, 41971, 42004, 42005, 42054, 42055, 42056, and 52205, whichever are in effect. This apportionment shall be called the first principal apportionment.

SEC. 196. Section 44849 of the Education Code is amended to read:

44849. Nothing in Sections 35029, 35161, 35162, Sections 44030 to 44034, inclusive, Sections 44036 to 44048, inclusive, Sections 44800 to 44802, inclusive, Sections 44804 to 44824, inclusive, Sections 45021 to 45060, inclusive, Sections 48913, 87462, 87463, 87469, 88021, 88071, Article 1 (commencing with Section 7000) of Chapter 1, Article 1 (commencing with Section 7100) of Chapter 2 of Part 5, Chapter 4 (commencing with Section 10300) of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, Article 1 (commencing with Section 44000), Article 3 (commencing with Section 44060) of Chapter 1, Chapter 2 (commencing with Section 44200), Chapter 3 (commencing with Section 44400), Article 2 (commencing with Section 44830), Article 3 (commencing with Section 44930) of Chapter 4, Chapter 5 (commencing with Section 45100), Article 2 (commencing with Section 87600), Article 4 (commencing with Section 87660) of Chapter 3 of Part 51, shall be construed in a manner as to deprive any person of his or her rights and remedies in a court of competent jurisdiction on a question of law and fact.

SEC. 197. Section 44850 of the Education Code is amended to

read:

44850. Nothing in Sections 35029, 35161, 35162, Sections 44030 to 44034, inclusive, Sections 44036 to 44048, inclusive, Sections 44800 to 44802, inclusive, Sections 44804 to 44824, inclusive, Sections 45021 to 45060, inclusive, Sections 48913, 87462, 87463, 87469, 88021, 88071, Article 1 (commencing with Section 7000) of Chapter 1, Article 1 (commencing with Section 7100) of Chapter 2 of Part 5, Chapter 4 (commencing with Section 10300) of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, Article 1 (commencing with Section 44000), Article 3 (commencing with Section 44060) of Chapter 1, Chapter 2 (commencing with Section 44200), Chapter 3 (commencing with Section 44400), Article 2 (commencing with Section 44830), Article 3 (commencing with Section 44930) of Chapter 4, Chapter 5 (commencing with Section 45100), Article 2 (commencing with Section 87600), Article 4 (commencing with Section 87660) of Chapter 3 of Part 51, shall be construed so as to repeal or negate any provisions concerning employees of school districts contained in the charter of any city, county, or city and county, adopted and approved in conformity with Article XI of the Constitution of this state.

SEC. 198. Section 44854 of the Education Code is amended to read:

44854. Acceptance of any exchange position by an employee of any school district in the state shall not affect his or her right to the permanent classification to which he or she is entitled, at the time of the acceptance, or any of his or her rights under the state teachers retirement salary provisions of this code, or under any local or district retirement plan, or system, and the time served in the exchange position shall be counted as time served in the service of the district in which he or she is employed immediately prior to acceptance of the exchange position in determining his or her status under Sections 35029, 35161, 35162, Sections 44030 to 44034, inclusive, Sections 44036 to 44048, inclusive, Sections 44800 to 44802, inclusive, Sections 44804 to 44824, inclusive, Sections 45021 to 45060, inclusive, Sections 48913, 87462, 87463, 87469, 88021, 88071, Article 1 (commencing with Section 7000) of Chapter 1, Article 1 (commencing with Section 7100) of Chapter 2 of Part 5, Chapter 4 (commencing with Section 10300) of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, Article 5 (commencing with Section 32340) of Chapter 3 of Part 19, Article 1 (commencing with Section 44000), Article 3 (commencing with Section 44060) of Chapter 1, Chapter 2 (commencing with Section 44200), Chapter 3 (commencing with Section 44400), Article 2 (commencing with Section 44830), Article 3 (commencing with Section 44930) of Chapter 4, Chapter 5 (commencing with Section 45100), Article 2 (commencing with Section 87600), Article 4 (commencing with Section 87660) of Chapter 3 of Part 51, and under the provisions of this code relating to state retirement salary, and under any local or district retirement

plan.

SEC. 199. Section 44971 of the Education Code is repealed.

SEC. 200. Section 51875.7 of the Education Code is amended to read:

51875.7. A school district or community college district, or county superintendent sponsoring a regional occupational center or program shall be eligible to receive grant assistance from the educational technology local assistance program for purposes of conducting, or entering into a contract for the conducting of, a job market study pursuant to Section 52302 or any other provision of law which assesses the need for courses in computer-related occupations. The results of the job market studies shall be made available to school counselors in the district or county.

SEC. 201. Section 52152 of the Education Code is amended to read:

52152. (a) Grants shall be awarded to persons enrolled as freshmen, sophomores, juniors, seniors, and graduate students in four-year institutions pursuing a course of study in a Commission on Teacher Credentialing approved bilingual program and to persons enrolled as first and second year community college students pursuing a course of study in a board of governors approved program leading to bilingual certification. For graduate students working towards a bilingual, cross-cultural specialist credential, the Student Aid Commission shall verify, when applicable, with the Commission on Teacher Credentialing that the student has a basic teaching credential.

(b) Recipients who are enrolled in a two-year community college program must be enrolled in a board of governors approved program leading to bilingual certification. Students who are enrolled in four-year institutions must be pursuing a multiple- or single-subject credential with a bilingual emphasis at a Commission on Teacher Credentialing approved institution. Certificated teachers receiving this funding shall be pursuing a bilingual, cross-cultural specialist credential at an institution with a Commission on Teacher Credentialing approved specialist program.

(c) All applicants must be certified by the educational institution at which they enroll as having demonstrated, upon entry, sufficient oral proficiency in the target language to attain exit level competency in the target language and culture consistent with Commission on Teacher Credentialing requirements. First priority for grants shall be given to renewal Bilingual Teacher Corps and Bilingual-Crosscultural Teacher Development Grant recipients and persons with experience as bilingual teacher aides who are attending full time or who are attending part time and are employed as bilingual teacher aides and who are most likely to receive their bilingual teaching credential.

SEC. 202. Section 52154 of the Education Code is amended to read:

52154. The Student Aid Commission shall chair as ex officio

member a Bilingual Teacher Grant Program Advisory Committee to advise the commission on the operations of the program. The advisory committee shall consist of the following:

(a) A representative of the Board of Governors of the California Community Colleges.

(b) Four coordinators of bilingual teacher grant programs representing California Community Colleges, the California State University, the University of California, and independent colleges and universities nominated by the respective segment and approved by the Student Aid Commission.

(c) One representative from each of the following who shall be nominated by each respective agency and approved by the Student Aid Commission:

(1) The State Department of Education.

(2) The Commission on Teacher Credentialing.

(3) The California Postsecondary Education Commission.

(d) The Student Aid Commission shall appoint one student grant recipient to the advisory committee.

SEC. 204. Section 52302.3 of the Education Code is amended to read:

52302.3. (a) Every vocational course or program offered by a school district or districts or county superintendent or superintendents sponsoring a regional occupational center or program shall be reviewed every two years by the appropriate governing body to assure that each course or program does all of the following:

(1) Meets a documented labor market demand.

(2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any course or program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing body shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local private industry council established pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code, which review and comments shall occur prior to any decision by the appropriate governing body.

(d) This section shall apply to each course or program commenced subsequent to the effective date of this section.

SEC. 205. Section 52342 of the Education Code is amended to read:

52342. In the implementation of this article, the State Department of Education shall, on a regular basis, advise and consult with representatives of the Employment Development Department, the Board of Governors of the California Community Colleges, the California Postsecondary Education Commission, the University of California, the Chancellor of the California State University, the

Commission on Teacher Credentialing, the Department of Industrial Relations, the Department of Consumer Affairs, the California Advisory Council on Vocational Education and Technical Training, and the State Personnel Board.

SEC. 206. Section 52512 of the Education Code is amended to read:

52512. Classes for adults may be maintained in conjunction with day or evening high schools, day or evening adult schools, or day or evening regional occupational centers.

SEC. 207. Section 62001 of the Education Code is amended to read:

62001. (a) The intent of the Legislature in enacting this section is to assure a thorough review of programs listed in Sections 62000.1 to 62000.5, inclusive, and the funding sources thereof, so that they most effectively, efficiently, and economically meet the needs of pupils and improve schools. It is not the intent of the Legislature in enacting this section to remove resources from students with special needs or to cease efforts to improve the schools.

(b) It was the intent of the Legislature in enacting this part to ensure that each categorical program is thoroughly reviewed. It was also intended that programs would be reviewed the year prior to the sunset date so that school districts and county offices of education would not be subject to unnecessary confusion and disruption in planning and administering those programs.

(c) It is further the intent of the Legislature that the legislative review of programs specified in Sections 62000.1 to 62000.5, inclusive, shall consider the appropriateness of state administration by agencies other than by the State Department of Education, such as the Commission on Teacher Credentialing and the Board of Governors of the California Community Colleges.

SEC. 208. Section 66010 of the Education Code is amended to read:

66010. Public higher education consists of (a) the California Community Colleges, (b) the California State University, and each campus, branch, and function thereof, (c) each campus, branch, and function of the University of California, and (d) the California Maritime Academy.

SEC. 209. Section 66011 of the Education Code is amended to read:

66011. (a) It is hereby declared to be the policy of the Legislature that all resident applicants to California institutions of public higher education, who are determined to be qualified by law or by admission standards established by the respective governing boards, should be admitted to either (1) a district of the California Community Colleges, in accordance with Section 76000, (2) the California State University, or (3) the University of California.

(b) As used in this part, "governing boards" means the local boards of trustees and the Board of Governors of the California Community Colleges, the Trustees of the California State University,

and the Regents of the University of California.

SEC. 210. Section 66017 of the Education Code is amended to read:

66017. The respective governing boards of the California Community Colleges, the California State University, or the University of California shall adopt appropriate procedures and designate appropriate persons to take disciplinary action against any student, member of the faculty, member of the support staff, or member of the administration of the community college, state college, or state university who, after a prompt hearing by a campus body, has been found to have willfully disrupted the orderly operation of the campus. Nothing in this section shall be construed to prohibit, where an immediate suspension is required in order to protect lives or property and to ensure the maintenance of order, interim suspension pending a hearing; provided that a reasonable opportunity be afforded the suspended person for a hearing within 10 days. The disciplinary action may include, but need not be limited to, suspension, dismissal, or expulsion. Sections 89538 to 89540, inclusive, shall be applicable to any state university or college employee dismissed pursuant to this section.

SEC. 211. Section 66021 of the Education Code is amended to read:

66021. It is the intent of the Legislature that the Budget Act for each fiscal year provide sufficient funding for financial aid for students with demonstrated financial need at the University of California, the California State University, and the California Community Colleges to offset increases in student charges at those institutions. The Legislature intends that funds for increased student financial aid be provided from sources other than student fees.

SEC. 213. Section 66101 of the Education Code is repealed.

SEC. 214. Section 66102 of the Education Code is repealed.

SEC. 215. Section 66200 of the Education Code is repealed.

SEC. 219. Section 66700 of the Education Code is amended to read:

66700. The California Community Colleges are postsecondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of the California Community Colleges and exercise general supervision over the California Community Colleges.

SEC. 220. Section 66700.5 of the Education Code is repealed.

SEC. 222. Section 66902.5 of the Education Code is repealed.

SEC. 224. Section 67007 of the Education Code is repealed.

SEC. 225. Section 68010 of the Education Code is repealed.

SEC. 226. Section 68011 of the Education Code is amended to read:

68011. "Institution" means the University of California, the California State University, the California Maritime Academy, or a college of the California Community Colleges.

SEC. 227. Section 68012 of the Education Code is amended to read:

68012. (a) "District" means a community college district maintaining one or more community colleges.

(b) "District governing board" means the governing board of a district maintaining one or more community colleges.

(c) "Governing board" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Maritime Academy, or the Board of Governors of the California Community Colleges.

SEC. 228. Section 68013 of the Education Code is repealed.

SEC. 229. Section 68016 of the Education Code is amended to read:

68016. "Continuous attendance," as it refers to attendance at an institution, means a student claiming continuous attendance who has been enrolled full time, as determined by the governing board or district governing board, as appropriate, for a normal academic year at the institution since the beginning of the period for which continuous attendance is claimed. Nothing in this section shall require a student to attend summer sessions or other terms beyond the normal academic year in order to render his or her attendance "continuous."

SEC. 230. Section 68019 of the Education Code is repealed.

SEC. 231. Section 68020 of the Education Code is repealed.

SEC. 232. Section 68021 of the Education Code is repealed.

SEC. 233. Section 68022 of the Education Code is amended to read:

68022. "Resident classification" means classification as a resident, pursuant to Section 68017, at the University of California, the California State University, the California Maritime Academy, or a California community college.

SEC. 234. Section 68023 of the Education Code is amended to read:

68023. "Residence determination date" is a date or day established by the governing boards or district governing boards, as appropriate, for each semester, quarter, or term to determine a student's residence.

SEC. 235. Section 68040 of the Education Code is amended to read:

68040. Each student shall be classified as a resident or nonresident at the University of California, the California State University, or the California Maritime Academy or at a California community college.

SEC. 236. Section 68041 of the Education Code is amended to read:

68041. Each student enrolled or applying for admission to an institution shall provide the information and evidence of residence as deemed necessary by the governing board or district governing board, as appropriate, to determine his or her classification. An oath

or affirmation may be required in connection with taking testimony necessary to ascertain a student's classification. The determination of a student's classification shall be made in accordance with this part and the residence determination date for the semester, quarter, or term for which the student proposes to attend an institution.

SEC. 238. Section 68051 of the Education Code is amended to read:

68051. Unless otherwise provided by law, the governing board or district governing board shall adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund.

SEC. 238.2. Section 68070 of the Education Code is amended to read:

68070. A student who remains in this state after his or her parent, who was theretofore domiciled in California for at least one year immediately prior to leaving and has, during the student's minority and within one year immediately prior to the residency determination date, established residence elsewhere, shall be entitled to resident classification until he or she has attained the age of majority and has resided in the state the minimum time necessary to become a resident, so long as, once enrolled, he or she maintains continuous attendance at an institution.

SEC. 238.4. Section 68071 of the Education Code is amended to read:

68071. A student who has been entirely self-supporting and actually present in California for more than one year immediately preceding the residence determination date, with the intention of acquiring a residence therein, shall be entitled to resident classification until he or she has resided in the state the minimum time necessary to become a resident.

SEC. 238.6. Section 68072 of the Education Code is amended to read:

68072. A student who has not been an adult for more than one year immediately preceding the residence determination date for the semester, quarter, or term for which he or she proposes to attend an institution shall have his or her immediate premajority derived California residence, if any, added to his or her postmajority residence to obtain the one year of California residence required by Section 68017.

SEC. 238.8. Section 68073 of the Education Code is amended to read:

68073. A student shall be entitled to resident classification if, immediately prior to enrolling at an institution, he or she has lived with and been under the continuous direct care and control of any adult or adults, other than a parent, for a period of not less than two years, provided that the adult or adults having control have been domiciled in California during the year immediately prior to the residence determination date. This exception shall continue until the student has attained the age of majority and has resided in the state

the minimum time necessary to become a resident, so long as continuous attendance is maintained at an institution.

SEC. 240. Section 68090 of the Education Code is repealed.

SEC. 240.3. Section 68100 of the Education Code is amended to read:

68100. (a) A district may classify a student as a district resident if he or she lives with a parent who earns a livelihood primarily by performing agricultural labor for hire in California and other states and the parent has performed this labor in this state for at least two months per year in each of the two preceding years, the parent lives within the district which maintains the community college attended by the student, and the parent claims the student as a dependent on his or her state or federal personal income tax returns if he or she has sufficient income to have a personal income tax liability.

(b) A district may also classify a student as a district resident if he or she earns a livelihood primarily by performing agricultural labor for hire in California and other states and he or she has performed this labor in this state for at least two months per year in each of the two preceding years.

(c) The Board of Governors of the California Community Colleges shall prescribe rules and regulations for the implementation of this section.

SEC. 243. Section 69510 of the Education Code is amended to read:

69510. The Student Aid Commission shall be composed of the following 15 members:

(a) One representative from public, proprietary, or nonprofit postsecondary schools located in California.

(b) One representative from a California independent college or university.

(c) One representative each from the University of California, the California State University, and the California Community Colleges.

(d) Two members each of whom shall be a student enrolled in a California postsecondary educational institution at the time of appointment, and shall be enrolled in a California postsecondary educational institution for the duration of the term.

(e) Three public members.

(f) One representative from a California secondary school.

(g) Two representatives appointed by the Senate Rules Committee.

(h) Two representatives appointed by the Speaker of the Assembly.

SEC. 244. Section 69511.5 of the Education Code is amended to read:

69511.5. (a) Notwithstanding Section 69511, the Governor shall appoint each student member of the Student Aid Commission pursuant to subdivision (d) of Section 69510 from the persons nominated in accordance with the provisions of subdivision (b).

(b) For each student member of the commission, the appropriate

student organization of each of the four postsecondary education segments may submit a list of nominees. The appropriate student organizations are:

(1) The California State Student Association.

(2) The University of California Student Association.

(3) The California Association of Independent College and University Students.

(4) A composite group of representative community college student organizations, as determined by the Board of Governors of the California Community Colleges.

(c) Participating student organizations designated in subdivision (b) shall inform students within their respective segment of pending student vacancies on the commission.

(d) Any person appointed pursuant to subdivision (a) may be reappointed if the person is renominated pursuant to subdivision (b), but in no event shall the person be reappointed for more than two consecutive terms if the student is enrolled in the same postsecondary education segment as the one in which he or she was enrolled when first appointed.

(e) The person appointed as a student member of the Student Aid Commission pursuant to this section shall be subject to confirmation by the Senate as required in subdivision (d) of Section 69511.

SEC. 245. Section 69537 of the Education Code is amended to read:

69537. An individual selected for a Cal Grant A award who enrolls in a California community college may elect to have the award held in trust for him or her for a period not to exceed two academic years, except that the commission may extend the period in which his or her award may be held in trust for up to three academic years if, in the commission's judgment, the student's rate of academic progress has been as rapid as could be expected in light of the personal and financial conditions that the student has encountered. The commission shall, in that case, hold the award in trust, to be granted to the award winner upon receipt of his or her request therefor within that period, provided that at the time of making the request he or she meets all of the requirements of this chapter. Upon receipt of the request the commission shall assess or reassess the financial needs of the award winner. The commission may prescribe the forms and procedures to be utilized for the purposes of this section. The commission may award to another eligible individual any award being so held in trust, subject to this section and any other conditions and restrictions that may be imposed by the commission, to the end that all authorized awards are being continually utilized. Following the first year for which any Cal Grant award is made, the awards shall be included in the number of the continuing awards available for any year and not the authorized new awards for the year.

SEC. 246. Section 69640 of the Education Code is amended to read:

69640. It is the intent of the Legislature that the California

Community Colleges recognize the need and accept the responsibility for extending the opportunities for community college education to all who may profit therefrom regardless of economic, social, and educational status. It is the intent and purpose of the Legislature in establishing the Community College Extended Opportunity Programs and Services (EOPS) to encourage local community colleges to establish and implement programs directed to identifying those students affected by language, social, and economic handicaps, to increase the number of eligible EOPS students served, and to assist those students to achieve their educational objectives and goals, including, but not limited to, obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions.

The rules and regulations of the Board of Governors of the California Community Colleges shall be consistent with this article. These rules and regulations, and EOPS, shall be consistent with all of the following goals:

(a) To increase the number and percentage of students enrolled in community colleges who are affected by language, social, and economic disadvantages, consistent with state and local matriculation policies.

(b) To increase the number and percentage of Extended Opportunity Programs and Services (EOPS) students who successfully complete their chosen educational objectives.

(c) To increase the number and percentage of EOPS students who are successfully placed into career employment.

(d) To increase the number and percentage of EOPS students who transfer to four-year institutions following completion of the related educational programs at community colleges.

(e) To strive to assist community colleges to meet student and employee affirmative action objectives.

(f) To improve the delivery of programs and sevices to the disadvantaged.

The Legislature further intends that EOPS shall not be viewed as the only means of providing services to nontraditional and disadvantaged students or of meeting student and employee affirmative action objectives.

The Legislature finds that the establishment and development of extended opportunity programs and services are essential to the conservation and development of the cultural, social, economic, intellectual, and vocational resources of the state.

SEC. 247. Section 69641 of the Education Code is amended to read:

69641. The Extended Opportunity Programs and Services (EOPS) provided by a community college district shall supplement the regular educational programs of the community college district to encourage the enrollment of students handicapped by language, social, and economic disadvantages, and to facilitate the successful completion of their educational goals and objectives. EOPS shall be

provided by certificated directors and instructors, as well as by counselors and other support staff approved by the governing board of the community college district. Participation in an extended opportunity program or service shall not preclude participation in any other program offered by the community college district.

SEC. 248. Section 69641.5 of the Education Code is amended to read:

69641.5. The Board of Governors of the California Community Colleges shall consider adopting regulations which include all of the following objectives:

(a) That the Extended Opportunity Programs and Services provided by a community college shall include, but not be limited to, staff qualified to counsel all EOPS students regarding their individual educational objectives and the specific academic or vocational training program necessary to achieve those objectives, and that each EOPS student receives that counseling upon his or her initial enrollment in the community college, and at least every six months thereafter.

(b) That in assisting all EOPS students to identify their educational objectives, the Extended Opportunity Programs and Services provided by a community college identifies those students who want to transfer to a four-year institution, and those who have the potential to transfer successfully, and that the EOPS director at each community college disseminates the names and addresses of these potential transfer students to admissions staff at public universities throughout the state at least once a year.

(c) That the EOPS director at each community college shall work with other community college staff to encourage all interested EOPS students to enroll in existing community college classes designed to develop skills necessary for successful study at a university, including, but not limited to, time management, research and study skills, classroom note-taking skills, and writing skills, and that these classes be developed if they are not already established.

SEC. 249. Section 69642 of the Education Code is amended to read:

69642. Definitions:

(a) "Extended opportunity program" means a special program or method of instruction designed to facilitate the language, educational, or social development of a student and increase his or her potential for success in the college.

(b) "Extended opportunity services" means a program of assistance designed to aid students with socioeconomic handicaps to permit them to enroll in and participate in the educational activities of the college, and to progress toward completing their educational goals and objectives, including, but not limited to, graduation from college.

SEC. 250. Section 69643 of the Education Code is amended to read:

69643. (a) There is in the state government the Advisory

Committee on Extended Opportunity Programs and Services. It shall be comprised of nine members appointed by the board, two members appointed by the Speaker of the Assembly and two members appointed to the Senate Committee on Rules. The nine members appointed by the board shall serve for four-year terms, except the first term of each shall be determined by lot at the first meeting of the board. Three shall serve for four years, three shall serve for three years, and three shall serve for two years. The two members appointed by the Speaker of the Assembly and the two members appointed by the Senate Committee on Rules shall serve at the pleasure of the respective appointing powers.

(b) The chairperson and vice chairperson of the committee shall be designated by the board from among the members appointed by the board.

(c) The members of the committee shall serve without compensation, but shall be reimbursed for necessary traveling and other expenses incurred in performing their duties and responsibilities.

(d) The committee shall serve as an advisory body to the board, shall formulate and present policy recommendations as it determines will effect statewide establishment and conduct of community college programs of extended opportunities and services, shall review annually and report to the board the progress made under this article with the California Community Colleges toward the extension of educational opportunities for all students who may profit from instruction, and make other recommendations to implement this article. The Chancellor of the California Community Colleges shall be executive secretary of the committee, shall report to the board on the actions of the committee, and, at the recommendation of the committee and its direction, shall make recommendations to the board pursuant to this article.

(e) All meetings of the committee shall be open and public, and all persons shall be permitted to attend any meeting of the committee.

SEC. 251. Section 69644 of the Education Code is repealed.

SEC. 252. Section 69645 of the Education Code is repealed.

SEC. 253. Section 69646 of the Education Code is repealed.

SEC. 254. Section 69647 of the Education Code is repealed.

SEC. 255. Section 69648 of the Education Code is amended to read:

69648. By January 1, 1986, the board shall adopt rules and regulations necessary to implement this article, including rules and regulations which do all of the following:

(a) Prescribe the procedure by which a district shall identify a student eligible for extended opportunity programs or services on the basis of the student's language, social, or economic disadvantages.

(b) Establish minimum standards for the establishment and conduct of extended opportunity programs and services. The standards may include, but shall not be limited to, guidelines for all

of the following:

(1) The provision of staffing and program management.

(2) The establishment of a documentation and data collection system.

(3) The establishment of an EOPS advisory committee.

(4) The provision of recruitment and outreach services.

(5) The provision of cognitive and noncognitive assessment, advising, and orientation services.

(6) The provision of college registration.

(7) The provision of basic skills instruction, seminars, and tutorial assistance.

(8) The provision of counseling and retention services.

(9) The provision of transfer services.

(10) The provision of direct aid.

(11) The establishment of objectives to achieve the goals specified in Section 69640, and objectives to be applied in implementing extended opportunity programs and services.

(c) Subject to approval of the chancellor, establish procedures for the review and evaluation of the districts' extended opportunity programs and services.

(d) Require the submission of the reports by districts that will permit the evaluation of the program and services offered.

SEC. 256. Section 69648.5 of the Education Code is amended to read:

69648.5. The board of governors may use up to 1 percent of the funds appropriated for the EOPS program by the annual Budget Act to monitor program activities and to conduct the evaluation of EOPS offered by districts.

SEC. 257. Section 69648.7 of the Education Code is repealed.

SEC. 258. Section 69649 of the Education Code is amended to read:

69649. (a) The governing board of a community college district may, with the approval of the board, establish an extended opportunity program.

Except as provided in subdivision (b), in order to be eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of Section 69648.

(b) The board of governors may waive any or all of the minimum standards established pursuant to subdivision (b) of Section 69648 if the board of governors determines that unusual circumstances which merit a waiver exist.

SEC. 260. Section 69653 of the Education Code is amended to read:

69653. Applications shall be subject to the approval of the board. Upon approval by the board, it shall certify an apportionment or apportionments to the Controller. The Controller shall draw warrants on the State Treasury in the amounts certified in favor of the governing board of the community college district which has jurisdiction over the applicant district in accordance with a schedule

of payments established by the board and approved by the Department of Finance.

SEC. 261. Section 69655 of the Education Code is amended to read:

69655. (a) Pursuant to Section 69648, the Board of Governors of the California Community Colleges shall determine the elements of a statewide data base for the Community College Extended Opportunity Programs and Services, which shall be used for periodic evaluation of the programs and services. The data base shall include all information necessary to demonstrate the statewide progress towards achieving the program goals identified in Section 69640, and program objectives adopted pursuant to Section 69648 including, but not limited to, all of the following:

(1) The annual number of extended opportunity programs and services (EOPS) students and non-EOPS students who complete degree or certificate programs, transfer programs, or other programs, as determined by state and local matriculation policies.

(2) The annual number of EOPS and non-EOPS students who transfer to institutions which award the baccalaureate degree. In implementing this paragraph, the board of governors shall work in cooperation with the California Postsecondary Education Commission, the President of the University of California, the Chancellor of the California State University, and the Association of Independent Colleges and Universities to establish methods for obtaining the necessary data.

(3) The annual number of EOPS and non-EOPS students completing occupational programs who find career employment.

In implementing this paragraph, the board of governors shall integrate the data collection with existing data collection requirements pertaining to vocational education.

(b) Beginning in January 1987 the board of governors shall annually report to the Legislature regarding the number of students served by the Community College Extended Opportunity Programs and Services and the number of EOPS students who achieve their educational objectives.

SEC. 262. Section 69657 of the Education Code is repealed.

SEC. 263. Section 71004 of the Education Code is amended to read:

71004. Members of the board shall receive their actual and necessary traveling expenses while on official business. Each member shall also receive one hundred dollars ($100) for each day he or she is attending to official business. The headquarters of the board and the chief executive officer shall be in Sacramento.

SEC. 264. Section 71005 of the Education Code is repealed.

SEC. 265. Section 71020 of the Education Code is amended to read:

71020. The board of governors shall develop and submit to the Governor, every three years, commencing July 1, 1989, a diversity paper concerning its own membership, providing the board's

assessment of its role in statewide representation of minorities, women, and the disabled.

SEC. 266. Section 71025 is added to the Education Code, to read:

71025. (a) The name "California Community Colleges" is the property of the state. No person shall, without permission of the Board of Governors of the California Community Colleges, use this name, or any abbreviation of it, or any name of which these words are a part in any of the following ways:

(1) To designate any business, social, political, religious, or other organization, including but not limited to, any corporation, firm, partnership, association, group, activity or enterprise.

(2) To imply, indicate or otherwise suggest that any organization, or any product or service of that organization, is connected or affiliated with, or is endorsed, favored or supported by, or is opposed by one or more California Community Colleges, the Board of Governors of the California Community Colleges, or the office of the Chancellor of the California Community Colleges.

(3) To display, advertise, or announce these names publicly at or in connection with any meeting, assembly, or demonstration, or any propaganda, advertising or promotional activity of any kind which has for its purpose or any part of its purpose the support, endorsement, advancement, opposition or defeat of any strike, lockout, or boycott or of any political, religious, sociological, or economic movement, activity or program.

The provisions of this section shall not preclude the use of the name "California Community Colleges" by any person or organization otherwise subject to this section using the name immediately prior to March 4, 1972.

(b) Nothing in this section shall interfere with or restrict the right of any person to make a true and accurate statement in the course of stating his or her experience or qualifications for any academic, governmental, business, or professional credit or enrollment, or in connection with any academic, governmental, professional or other employment whatsoever.

(c) Every person violating provisions of this section is guilty of a misdemeanor.

SEC. 267. Section 71027.5 of the Education Code is repealed.

SEC. 267.5. Section 71028 is added to the Education Code, to read:

71028. (a) The board of governors shall adopt regulations to ensure that the California Community Colleges, as a system, establish and apply the statewide participation goals for contracting with minority business enterprises and women business enterprises specified in Section 10115 of the Public Contract Code. The statewide participation goal for the California Community Colleges shall be based upon the total dollar amount of contracts awarded, with not less than 15 percent being awarded to minority business enterprises, and not less than 5 percent being awarded to women business enterprises. The regulations adopted by the board of governors shall

be adapted from and consistent with the provisions of Article 1.5 (commencing with Section 10115) of Chapter 1 of Part 1 of the Public Contract Code.

(b) On January 1 of each year, the board of governors shall report to the Legislature and the Governor on the level of participation by minority and women business enterprises in contracts awarded by the California Community Colleges as a system and by individual community college districts.

SEC. 268. Section 71033 of the Education Code is repealed.

SEC. 269. Section 71034 of the Education Code is repealed.

SEC. 270. Section 71038 of the Education Code is repealed.

SEC. 271. Section 71039 of the Education Code is repealed.

SEC. 272. Section 71040 of the Education Code is amended to read:

71040. The board of governors may allow actual and necessary travel expenses to community college students, faculty, staff, or other community college officials who serve on study teams, task forces, or similar groups formed by the board of governors or by the chancellor's office and who, as official student, faculty, staff, or official representatives, attend meetings of any association, organization, or agency which has as its principal purpose the study of matters pertinent to education or to a particular field or fields of education relevant to community colleges.

SEC. 273. Section 71041 of the Education Code is repealed.

SEC. 274. Section 71042 of the Education Code is repealed.

SEC. 275. Section 71046 of the Education Code is amended to read:

71046. The Board of Governors of the California Community Colleges may accept on behalf of, and in the name of, the state gifts, donations, bequests, and devises that may be made to the board of governors, or to any school or other institution under the jurisdiction of the board of governors whenever the gift, donation, bequest, or devise and the terms and conditions thereof, will aid the Board of Governors of the California Community Colleges in carrying out its primary functions, as specified in Sections 70900 to 70902, inclusive. Gifts, donations, bequests, and devises may be made subject to the conditions or restrictions as the board of governors may deem advisable.

SEC. 276. Section 71047 of the Education Code is repealed.

SEC. 277. Section 71048 of the Education Code is repealed.

SEC. 279. Section 71050 of the Education Code is amended to read:

71050. The Board of Governors of the California Community Colleges shall survey local community college districts to determine the level and type of services needed and available for welfare recipients pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. The Board of Governors of the California Community Colleges shall develop a plan and standards for the level of participation by

community college districts required to meet the goal of providing open entry/open exit education, skills training, assessment, and counseling to these recipients. The plan shall provide for local in-service training and technical assistance to community college districts in development of contracts and programs in cooperation with county welfare agencies, service delivery areas under the Job Training Partnership Act, and others necessary to carry out the intent of that article. The plan shall also provide for the identification of necessary funding levels and sources of funding, including employer-based training and funds available under Section 202(b)(1) of the Job Training Partnership Act, to meet the goals of Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, and the development and implementation of monitoring and reporting tools for the continued participation of community college districts in the provision of services under contracts required by that article.

SEC. 280. Article 3 (commencing with Section 71060) of Chapter 1 of Part 44 of the Education Code is repealed.

SEC. 281. Section 71090 of the Education Code is amended to read:

71090. (a) The board shall appoint a chief executive officer, to be known as the Chancellor of the California Community Colleges, and fix his or her compensation.

(b) The chancellor shall execute the duties and responsibilities as may be delegated to him or her by the board. Whenever in this code a power is vested in the board, the board, by a majority vote, may adopt a rule delegating that power to the chancellor or any officer, employee, or committee as the board may designate. The rule shall prescribe the limits of the delegation.

SEC. 282. Section 71092 of the Education Code is amended to read:

71092. The board of governors shall employ and fix the compensation, in accordance with law, of assistants, clerical, and other employees as he or she may deem necessary for the effective conduct of the work of the board and the chancellor's office.

SEC. 283. Section 71093 of the Education Code is amended to read:

71093. The board of governors may purchase annuity contracts for its permanent employees and shall reduce the salary of an employee for whom a contract is purchased by the amount of the cost thereof provided that all of the following conditions are met:

(a) The annuity contract is under an annuity plan which meets the requirements of Section 403(b) of the Internal Revenue Code of 1954 and Section 17512 of the Revenue and Taxation Code.

(b) The employee makes application to the board of governors for the purchase and reduction of salary.

(c) All provisions of the Insurance Code and the Government Code applicable to the purchase of the annuities are satisfied.

SEC. 284. Section 71095 of the Education Code is repealed.

SEC. 285. Section 71096 of the Education Code is repealed.

SEC. 286. Section 71097 of the Education Code is repealed.

SEC. 287. Section 72000 of the Education Code is amended to read:

72000. (a) The district and its governing board may sue and be sued, and shall act in accordance with Section 70902.

(b) The district name shall be adopted and changed as follows:

(1) The first governing board of any new community college district shall, at the first meeting of the board or as soon as practicable thereafter, name the district. The district shall be designated as the "_____ Community College District."

(2) The governing board of a community college district may, by resolution, change the name of the district or of any of the community colleges maintained by the district. However, the name shall continue to contain the words "Community College District" or "Community College," as appropriate.

(3) Whenever a petition is presented to the governing board of a community college district, signed by at least 15 qualified electors of any community college district, asking that the name of the district, be changed, the governing board shall, at its next regular meeting, designate a day upon which it will conduct a hearing and act upon the petition, which hearing shall not be less than 10 days nor more than 40 days after that regular meeting. The clerk of the governing board shall give notice to all interested parties by sending a notice of the time for the hearing of the petition. Notices shall be mailed at least 10 days before the day set for the hearing. At the hearing the board shall by resolution either grant or deny the petition, and if the petition is granted, the clerk shall notify the Board of Governors of the California Community Colleges of the change of the name of the district or of any community college maintained by the district.

(4) The name "_____ Community College District" and the names of community colleges maintained by the district are the property of the district. No person shall, without permission of the board, use these names, or any abbreviation of them, or any name of which these words are a part in any of the following ways:

(A) To designate any business, social, political, religious, or other organization, including, but not limited to, any corporation, firm, partnership, association, group, activity or enterprise.

(B) To imply, indicate or otherwise suggest that any organization, or any product or service of the organization is connected or affiliated with, or is endorsed, favored or supported by, or is opposed by one or more California community colleges, the Board of Governors of the California Community Colleges, or the office of the Chancellor of the California Community Colleges.

(C) To display, advertise, or announce these names publicly at or in connection with any meeting, assembly, or demonstration, or any propaganda, advertising or promotional activity of any kind which has for its purpose or any part of its purpose the support, endorsement, advancement, opposition or defeat of any strike,

lockout, or boycott or of any political, religious, sociological, or economic movement, activity or program.

(D) The provisions of this section shall not preclude the use of the name "_____ Community College" or "_____ Community College District" by any person or organization otherwise subject to this section using the name immediately prior to the effective date of this section, so long as the name is not used in additional, different ways.

(E) Nothing in this section shall interfere with or restrict the right of any person to make a true and accurate statement in the course of stating his or her experience or qualifications for any academic, governmental, business, or professional credit or enrollment, or in connection with any academic, governmental, professional or other employment whatsoever.

(5) Any reference to junior colleges or junior college districts in any law shall be deemed to refer to community colleges and community college districts, respectively.

(c) Meetings of the governing board shall be held as follows:

(1) Within 20 days after the appointment of the community college board provided for by Section 72023, the board of governors shall call an initial organizational meeting of the board by giving at least 10 days' notice by registered mail to each member, for the purposes of organizing the community college board.

At the initial organizational meeting the community college board shall organize by electing a president from its members and a secretary, and may transact any other business relating to the affairs of the community college district.

(2) (A) The governing board of each community college district shall hold an annual organizational meeting. In a year in which a regular election for governing board members is conducted, the meeting shall be held on a day within a 15-day period that commences with the date upon which a governing board member elected at that election takes office. Organizational meetings in years in which no regular election for governing board members is conducted shall be held during the same 15-day period on the calendar. Unless otherwise provided by rule of the governing board, the day and time of the annual meeting shall be selected by the board at its regular meeting held immediately prior to the first day of such 15-day period, and the board shall notify the county superintendent of schools of the day and time selected. The secretary of the board shall, within 15 days prior to the date of the annual meeting, notify in writing all members and members-elect of the date and time selected for the meeting.

(B) If the board fails to select a day and time for the meeting, the county superintendent of schools having jurisdiction over the district shall, prior to the first day of such 15-day period and after the regular meeting of the board held immediately prior to the first day of the 15-day period, designate the day and time of the annual meeting. The day designated shall be within the 15-day period. He or she shall

notify in writing all members and members-elect of the date and time.

(C) At the annual meeting, the governing board of the community college district shall organize by electing a president, from its members, and a secretary.

(3) As an alternative to the procedures set forth in paragraph (2), in a community college district the boundaries of which are coterminous with the boundaries of a city and county, the governing board members of which district are elected in accordance with a city and county charter, the annual organizational meeting of the governing board may be held between January 8 and January 31, inclusive, as provided in rules and regulations adopted by the board. At the annual organizational meeting the community college district governing board shall organize by electing a president and vice president from its members.

(4) Subject to this section, the governing board of any community college district shall hold regular monthly meetings and shall by rule and regulation fix the time and place for its regular meetings. The action shall be given proper notice to all members of the board of the regular meetings.

(d) The governing board shall conduct its meetings as follows:

(1) A notice identifying the location, date, and time of the meeting shall be posted in each community college maintained by the district at least 10 days prior to the meeting and shall remain so posted to and including the time of the meeting.

(2) The community college board shall meet in a public building which is owned or leased by the community college district, or if in the judgment of the governing board, the interests of the district may be better served by holding its meetings elsewhere, it may meet at such other place in the community college district, high school districts, unified districts, or any combination thereof served by such community college district as it may by resolution determine.

(3) Except as otherwise provided by law, the governing board shall act by majority vote of all of the membership constituting the governing board.

(4) Every official action taken by the governing board of every community college district shall be affirmed by a formal vote of the members of the board, and the governing board of every community college district shall keep minutes of its meetings, and shall maintain a journal of its proceedings in which shall be recorded every official act taken.

(5) Notwithstanding any other provision of law, if a community college district governing board consists of seven members and not more than two vacancies occur on the governing board, the vacant position or positions shall not be counted for purposes of determining how many members of the board constitute a majority. Whenever any of the provisions of this code require unanimous action of all or a specific number of the members elected or appointed to the governing board, the vacant position or positions shall be excluded

from determination of the total membership constituting the governing board.

SEC. 287.5. Section 72001 of the Education Code is repealed.

SEC. 288. Section 72002 of the Education Code is repealed.

SEC. 288.5. Section 72013 is added to the Education Code, to read:

72013. With respect to access to community college district services, classes, and programs, and with respect to all references within this division, "handicap" and "disability" shall have the same meaning.

SEC. 289. Section 72014 is added to the Education Code, to read:

72014. No funds under the control of a community college district shall ever be used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. This section does not apply to any public funds which have been paid to an individual officer or employee of the district as salary, or to any funds which are used directly or indirectly for the benefit of student organizations.

SEC. 289.5. Section 72015 is added to the Education Code, to read:

72015. (a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.

(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

(f) The Legislature finds and declares that female students are not accorded opportunities for participation in community college athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in

community college athletics be provided equally to male and female students and on an equitable basis to all students.

(g) Insofar as practicable, in apportioning public funds, community college district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of the governing board of a community college district, or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and opportunities for participation shall include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(h) It is the further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. Nothing in this section shall be construed to require a community college to require competition between male and female students in school-sponsored athletic programs.

SEC. 290. Section 72020 of the Education Code is repealed.

SEC. 291. Section 72021 of the Education Code is repealed.

SEC. 292. Section 72023.5 of the Education Code is amended to read:

72023.5. (a) The governing board of each community college district shall order the inclusion within the membership of the governing board, in addition to the number of members otherwise prescribed, one or more nonvoting students who are residents of the district. These students shall have the right to attend each and all meetings of the governing board, except that student members shall not have the right, or be afforded the opportunity, to attend executive sessions of the governing board.

The students selected to serve on the governing board, in addition to being residents of the district, shall be enrolled in a community college of the district and shall be chosen, and shall be recalled, by the students enrolled in the community colleges of the district in accordance with procedures prescribed by the governing board. A student member shall be required throughout the term of his or her appointment to be enrolled in a community college of the district for at least five semester units, or its equivalent, and shall meet and maintain the minimum standards of scholarship for community college students prescribed by the community college district. The term of the student members shall be one year commencing on June 1 of each year.

The nonvoting student members appointed pursuant to this section shall be entitled to the mileage allowance prescribed by

Section 72123 to the same extent as regular members, but are not entitled to the compensation prescribed by Section 72425.

A nonvoting student member shall be seated with the members of the governing board and shall be recognized as a full member of the board at the meetings, including receiving all materials presented to the board members and participating in the questioning of witnesses and the discussion of issues.

The nonvoting student member shall not be included in determining the vote required to carry any measure before the board.

The nonvoting student member shall not be liable for any acts of the governing board.

(b) Notwithstanding the provisions of subdivision (a), the student member or members selected to serve on the governing board of a community college district pursuant to subdivision (a) may do any of the following:

(1) Make and second motions at the discretion of the governing board.

(2) Attend closed sessions, other than closed sessions on personnel matters or collective bargaining matters, at the discretion of the governing board.

(3) Receive compensation, at the discretion of the governing board, up to the amount prescribed by Section 72425.

(4) Serve a term commencing on July 1, 1981, and ending on May 15, 1982, and serve a term of one year commencing on May 15, 1982, and May 15 of each year thereafter, at the discretion of the governing board.

(c) It is the intent of the Legislature that any decision or action, including any contract entered into pursuant thereto, upon the motion or second of a motion of a student member, shall be fully legal and enforceable against the district or any party thereto.

(d) The governing board of each community college district which affords the student member or members of the board any of the privileges enumerated in subdivision (b) shall, by May 15 of each year, adopt rules and regulations implementing this section. These rules and regulations shall be effective until May 15 of the following year.

SEC. 293. Section 72023.7 of the Education Code is repealed.

SEC. 294. Section 72024 of the Education Code is repealed.

SEC. 295. Section 72025 of the Education Code is repealed.

SEC. 296. Section 72027 of the Education Code is amended to read:

72027. (a) Upon the formation of a community college district the county superintendent of schools having jurisdiction shall call and set the date of an election for the purpose of electing the governing board of the district. The call shall be issued not later than 30 days after the formation of the district. The election shall be called, held, and conducted as are elections for members of governing boards of elementary school districts.

(b) The first members of the governing board shall take office on the third Monday following their election. The term of office of subsequent members of the board shall begin on the last Friday in November following their election.

(c) Notwithstanding subdivision (a), the county superintendent of schools having jurisdiction may call and set the date for an election for the purpose of electing the governing board of the district on the same date that the election is held for the formation of the community college district. The call for both elections shall be issued at the same time. The election shall be called, held, and conducted the same as elections for members of the governing boards of elementary school districts.

(d) The majority of the members of the first elected board of any newly formed community college district, the members of which majority received the highest number of votes, shall serve until the last Friday in November of the second succeeding odd-numbered year. The terms of the other members shall expire on the last Friday in November of the first succeeding odd-numbered year. Those members shall continue in office until their successors are elected and qualified.

SEC. 297. Section 72028 of the Education Code is repealed.

SEC. 298. Section 72029 of the Education Code is repealed.

SEC. 299. Section 72030 of the Education Code is repealed.

SEC. 299.3. Section 72031 of the Education Code is amended to read:

72031. The provisions of this section shall apply only to the Los Angeles Community College District.

(a) Whenever in this code a section refers to a district, or to two or more districts, governed by a single governing board, or by governing boards of identical personnel, or to a district or districts in which the average daily attendance is in excess of 400,000, or makes a similar reference, all provisions of the section shall apply with equal force to both the city school district and community college district.

(b) Members of the governing board of the Los Angeles Community College District shall be elected at large in the manner established by Chapter 62 of the Statutes of 1968.

SEC. 300. Section 72032 of the Education Code is repealed.

SEC. 301. Section 72033 of the Education Code is repealed.

SEC. 303. Section 72035 of the Education Code is repealed.

SEC. 304. Section 72102 of the Education Code is amended to read:

72102. When a member of the governing board of a community college district which is being reorganized and which will cease to exist takes office as a member of the initial or interim governing board of a newly formed community college district, he or she shall cease to be a member of the governing board of the district being reorganized.

The governing board of a community college district which is being reorganized shall then appoint another person who is eligible

to serve on the governing board of the district being reorganized to the vacant position for the duration of the existence of the district being reorganized, but in no case for longer than 12 months.

SEC. 305. Section 72120 of the Education Code is repealed.

SEC. 307. Section 72122 of the Education Code is amended to read:

72122. The governing board of a community college district shall, unless a request by the student has been made pursuant to this section, hold closed sessions if the board is considering the suspension of, or disciplinary action or any other action in connection with any student of the community college district, if a public hearing upon the question would lead to the giving out of information concerning students which would be in violation of state or federal law regarding the privacy of student records.

Before calling a closed session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the student is a minor, notify the student and his or her parent or guardian, or the student if the student is an adult, of the intent of the governing board of the district to call and hold the closed session. Unless the student, or his or her parent, or guardian shall, in writing, within 48 hours after receipt of the written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider those matters shall be conducted by the governing board in closed session. If the written request is served upon the clerk or secretary of the governing board, the meeting shall be public except that any discussion at the meeting that might be in conflict with the right to privacy of any student other than the student requesting the public meeting or on behalf of whom the meeting is requested, shall be in closed session. Whether the matter is considered at a closed session or at a public meeting, the final action of the governing board of the community college district shall be taken at a public meeting and the result of that action shall be a public record of the community college district.

The governing board of a community college district may hold closed sessions to consider the conferring of honorary degrees or to consider gifts from a donor who wants to remain anonymous.

SEC. 308. Section 72125 of the Education Code is repealed.

SEC. 309. Section 72126 of the Education Code is repealed.

SEC. 311. Section 72132 of the Education Code is repealed.

SEC. 312. Section 72200 of the Education Code is repealed.

SEC. 313. Section 72202 of the Education Code is repealed.

SEC. 314. Section 72203 of the Education Code is repealed.

SEC. 315. Section 72204 of the Education Code is repealed.

SEC. 316. Section 72208 of the Education Code is repealed.

SEC. 317. Section 72231 of the Education Code is repealed.

SEC. 318. Section 72237 of the Education Code is repealed.

SEC. 318.5. Section 72241 of the Education Code is amended to read:

72241. In no event shall the approval of any state agency be a prerequisite to acceptance by the governing board of any community college district of a gift, donation, bequest, or devise. No real or personal property, including money, accepted by a governing board pursuant to this section shall be considered in determining the eligibility of the district for an apportionment from the State School Fund nor in determining the amount thereof.

SEC. 319. Section 72241.5 of the Education Code is repealed.

SEC. 320. Section 72243 is added to the Education Code, to read:

72243. Except as provided in Section 3074.7 of the Labor Code, no charges or fees shall be required to be paid by a resident or nonresident apprentice, or by his or her parent or guardian, for admission or attendance in any course of activity which is offered pursuant to Section 3074 of the Labor Code in accordance with the instructional hours requirements specified in subdivision (d) of Section 3078 of the Labor Code.

SEC. 321. Section 72244 of the Education Code is repealed.

SEC. 322. Section 72247 of the Education Code is amended to read:

72247. (a) The governing board of a community college district may require of students in attendance and employees of the district, the payment of a fee, in an amount not to exceed forty dollars ($40) per semester and twenty dollars ($20) per intersession to be fixed by the board, for parking services.

To encourage ridesharing and carpooling, for a student who certifies, in accordance with procedures fixed by the board, that he or she regularly has two or more passengers commuting to the community college with him or her in the vehicle parked at the community college, the fee shall not exceed thirty dollars ($30) per semester and ten dollars ($10) per intersession.

The fee shall only be required of students and employees using parking services. Students who receive financial assistance pursuant to any of the programs described in subdivision (g) of Section 72252 shall be exempt from parking fees in excess of twenty dollars ($20) per semester.

(b) The governing board of a community college district may also require the payment of a fee, to be fixed by the governing board, for the use of parking services by persons other than students and employees.

(c) All parking fees collected shall be deposited in the designated fund of the district in accordance with the California Community Colleges Budget and Accounting Manual and shall be expended only for parking services or for purposes of reducing the costs to students and employees of the college of using public transportation to and from the college.

Fees collected for use of parking services provided for by investment of student body funds under the authority of Section 76064 shall be deposited in a designated fund in accordance with the California Community Colleges Budget and Accounting Manual for

repayment to the student organization.

"Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities for vehicles and motor vehicles as defined by Sections 415 and 670 of the Vehicle Code, and the reduction of costs to students and employees of using public transportation to and from the college.

In no event may the fee required pursuant to this section exceed the actual cost of providing parking services.

(d) The governing board of a community college district may require of students in attendance and employees at a campus of the district the payment of a fee for purposes of reducing fares for services provided by common carriers or municipally owned transit systems to these students and employees, as provided in subdivision (e).

(e) Fees authorized by subdivision (d) for transportation services may be required only of students and employees using the services, or, in the alternative, of either of the following groups of people:

(1) Upon the favorable vote of a majority of the students and a majority of the employees of a campus of the district, voting at an election on the question of whether or not the governing board should require all students and employees at the campus to be assessed fees for transportation services for a two-year period, the fees may be required of all students and all employees of a campus of the community college district; or

(2) Upon the favorable vote of a majority of the students at a campus of the district voting at an election on the question of whether or not the governing board should require all students to be assessed fees for transportation services for a two-year period, the fees may be required of all students at the campus of the community college district. However, the employees shall not be entitled to use the services.

(f) In the event that fees are required to be assessed to all students and employees or all students as provided in paragraphs (1) and (2) of subdivision (e) for a two-year period, those fees may be continued for additional two-year periods by the governing board maintaining the campus, upon the favorable vote of a majority of the students and a majority of the employees or, in the case of paragraph (2) of subdivision (e), upon the favorable vote of a majority of the students of the campus, voting in an election on the question of whether or not the required fees should be continued.

(g) If, pursuant to this section, a fee is required of students for transportation services, any fee required of a part-time student shall be a pro rata lesser amount than the fee charged to full-time students, depending on the number of units for which the part-time student is enrolled. In addition, a governing board maintaining transportation services shall adopt rules and regulations governing the exemption of low-income students from required fees, and may adopt rules and regulations that provide for the exemption of others.

(h) The total fees to be fixed by the governing board of a

community college district pursuant to this section shall not exceed the amount prescribed in this section.

(i) No community college district shall increase its parking fees above forty dollars ($40) per year to an amount within an authorized level pursuant to this section until the board of trustees of the community college district has made sufficient findings that a fee increase is necessary. The findings shall be based, at a minimum, on all of the following:

(1) A community college's ability to adequately finance its parking program.

(2) A demonstration that the community college has exhaustively explored all other options for financing the parking program, including entering into arrangements with local governments.

(3) A demonstration that the community college actively promotes modes of public transportation.

SEC. 323. Section 72247.1 of the Education Code is repealed.

SEC. 324. Section 72248 of the Education Code is repealed.

SEC. 325. Section 72249 is added to the Education Code, to read:

72249. The board of governors shall adopt regulations regarding the authority of community college districts to require students to provide various types of instructional materials. These regulations shall reflect the intent of the Legislature that community college districts are not required to provide all materials, textbooks, equipment, and clothing necessary for each course and program. These regulations shall specify the conditions under which districts may require students to provide those materials which are of continuing value to the student outside of the classroom setting, including, but not limited to, textbooks, tools, equipment, clothing, and those materials which are necessary for the student's vocational training and employment. The regulations shall establish a process for monitoring district compliance with these regulations.

SEC. 326. Section 72253.3 is added to the Education Code, to read:

72253.3. If a student body association has been established at a community college, the governing body of the association may order that an election be held for the purpose of establishing a student representation fee of one dollar ($1) per semester. The election shall be held in compliance with regulations of the Board of Governors of the California Community Colleges and shall be open to all regularly enrolled students of the community college. The affirmative vote of two-thirds of the students voting in the election shall be sufficient to establish the fee. However, the election shall not be sufficient to establish the fee unless the number of students who vote in the election equals or exceeds the average of the number of students who voted in the previous three student body association elections.

The student representation fee authorized by this section shall be collected by the officials of the community college, together with all other fees, at the time of registration or before registration and shall be deposited in a separate fiduciary fund established per the

California Community Colleges Budget and Accounting Manual for student representation fees. The money collected pursuant to this section shall be expended to provide for the support of governmental affairs representatives who may be stating their positions and viewpoints before city, county, and district governments, and before offices and agencies of the state government. The chief fiscal officer of the community college shall have custody of the money collected pursuant to this section and the money shall be disbursed for the purposes described above upon the order of the governing body of the student body association. The district may retain a portion of the fees collected and deposited pursuant to this section that is equal to the actual cost of administering these fees up to, but not more than, 7 percent.

The student representation fee authorized by this section may be terminated by a majority vote of the students voting in an election held for that purpose. The election shall be called and held in compliance with regulations of the Board of Governors of the California Community Colleges and shall be open to all regularly enrolled students of the community college.

A student may, for religious, political, financial, or moral reasons, refuse to pay the student representation fee established under this section. The refusal shall be submitted in writing to the college officials at the time the student pays other fees collected by the college officials. The refusal shall be submitted on the same form that is used for collection of fees as provided by the college, which, as determined by the college, shall be as nearly as practical in the same form as a model form prescribed by regulations of the Board of Governors of the California Community Colleges.

SEC. 327. Section 72253.5 is added to the Education Code, to read:

72253.5. (a) An adult enrolled in a noncredit course shall not be required by the governing board of the district maintaining the class to pay nonresident tuition or any fee or charge of any kind for a class in English and citizenship for foreigners, a class in an elementary subject, a class designated by the governing board as a class for which high school credit is granted when the class is taken by a person who does not hold a high school diploma, or any class offered by a community college district pursuant to Section 8531, 8532, 8533, or 8534.

(b) The average daily attendance of adults in classes described in subdivision (a) shall be computed as prescribed by Section 84520 or 84524.5.

SEC. 328. Section 72253.7 is added to the Education Code, to read:

72253.7. A student enrolled in a class offered by a community college district which is not eligible for state apportionments may be required by the governing board of the district maintaining the class to pay a fee for the class. The total revenues derived from the fee shall not exceed the estimated cost of all of these classes maintained.

SEC. 329. Section 72255 of the Education Code is repealed.

SEC. 330. Section 72256 of the Education Code is repealed.

SEC. 331. Article 3 (commencing with Section 72280) of Chapter 3 of Part 45 of the Education Code is repealed.

SEC. 332. Article 5 (commencing with Section 72320) of Chapter 3 of Part 45 of the Education Code is repealed.

SEC. 336. Section 72408 of the Education Code is repealed.

SEC. 337. Section 72409 of the Education Code is repealed.

SEC. 338. Section 72412 of the Education Code is repealed.

SEC. 339. Section 72413 of the Education Code is repealed.

SEC. 340. Section 72419 of the Education Code is repealed.

SEC. 341. Section 72419.5 of the Education Code is repealed.

SEC. 342. Section 72420 of the Education Code is repealed.

SEC. 343. Section 72421 of the Education Code is repealed.

SEC. 344. Section 72422 of the Education Code is repealed.

SEC. 345. Section 72423 of the Education Code is amended to read:

72423. The governing board of each community college district shall provide for the payment of the travel expenses of any representatives of the board when performing services directed by the board.

SEC. 346. Section 72500 of the Education Code is amended to read:

72500. The governing board of any community college district is liable in the name of the district for all debts and contracts, including the salary due any instructor not made in excess of the moneys accruing to the district and usable for the purposes of the debts and contracts during the college year for which the debts and contracts are made. The district shall not be liable for debts and contracts made in violation of this section.

For the purposes of this section, moneys transferred to the funds of a newly organized district pursuant to Section 85223 are deemed district moneys accruing to the district and usable for the purposes of contracts made for the college year preceding the date the district became effective for all purposes.

SEC. 347. Section 72506 of the Education Code is amended to read:

72506. (a) Action taken by any governing board of a community college district to procure insurance shall be governed by the authority of Section 70902 and, where applicable, by Sections 989 to 991.2, inclusive, of the Government Code. However, the governing board of any community college district shall ensure against all of the following:

(1) The liability, other than a liability which may be insured against under Division 4 (commencing with Section 3200) of the Labor Code, of the district for damages for death, injury to person, or damage or loss of property.

(2) The personal liability of the members of the board and of the officers and employees of the district for damages for death, injury

to a person, or damage or loss of property caused by the negligent act or omission of the member, officer or employee when acting within the scope of his or her office or employment.

(b) The insurance may be written by any insurance company authorized to transact the business of insurance in the state, or by a nonadmitted insurer to the extent, and subject to the conditions, prescribed by Section 1763 of the Insurance Code.

(c) Notwithstanding paragraph (2) of subdivision (a), the governing board of any community college district may provide for persons authorized by the governing board to perform volunteer services for the district, insurance coverage which is the same as, or comparable to, that provided for employees of the district including coverage under Division 4 (commencing with Section 3200) of the Labor Code.

(d) The governing board of a community college district may provide protection from its own funds for the purpose of covering the liability of the district, its officers, agents, and employees, in lieu of carrying insurance in insurance companies, as provided in this section. The governing board may also provide protection against such liability partly by means of its own funds and partly by means of insurance written by insurance companies, as provided in this section.

SEC. 348. Section 72530 of the Education Code is amended to read:

72530. (a) The offering of any valuable thing to any member of the governing board of any community college district, with the intent to influence his or her action in regard to the granting of any instructor's certificate, the appointment of any instructor, superintendent, or other officer or employee, the adoption of any textbook, or the making of any contract to which the board of which he or she is a member is a party, or the acceptance by any member of the governing board of any valuable thing, with corrupt intent, is a misdemeanor.

(b) Any contract or appointment obtained from the governing board of any community college district by corrupt means is void.

SEC. 349. Section 72531 of the Education Code is repealed.

SEC. 350. Section 72532 of the Education Code is repealed.

SEC. 351. Article 1 (commencing with Section 72600) of Chapter 6 of Part 45 of the Education Code is repealed.

SEC. 354. Article 4 (commencing with Section 72640) of Chapter 6 of Part 45 of the Education Code is repealed.

SEC. 355. Article 5 (commencing with Section 72650) of Chapter 6 of Part 45 of the Education Code is repealed.

SEC. 361. Section 74000 of the Education Code is amended to read:

74000. The Legislature hereby declares as its policy that all of the territory of the state shall be included within a community college district, except that territory located within a county where the county residents accounted for fewer than 350 units of average daily

attendance in the state's community colleges during the preceding fiscal year. The territory located within such a county may be included within a community college district pursuant to the procedures prescribed by Article 2 (commencing with Section 74130) of Chapter 2.

SEC. 362. Section 74001 of the Education Code is amended to read:

74001. On and after January 1, 1983, the provisions of Article 1 (commencing with Section 4000) of Chapter 1 of Part 3 and Articles 2 and 3 (commencing with Section 35720) of Chapter 4 of Part 21 shall apply to actions to reorganize community college districts, as may be applicable, except that whenever any reference is made to the State Board of Education in those provisions the reference shall be deemed, for the purpose of community college district reorganization, to be the Board of Governors of the California Community Colleges.

SEC. 363. Section 74010 of the Education Code is repealed.

SEC. 364. Section 74011 of the Education Code is repealed.

SEC. 371. Section 74104 of the Education Code is amended to read:

74104. Upon receipt of the petition, the county superintendent of schools shall transmit a copy of the petition to the board of governors. The county superintendent of schools, within 30 days after the petition for reorganization is filed, shall examine the petition and, if he or she finds it to be sufficient and signed as required by law, shall transmit the petition simultaneously to the county committee, the governing board of each affected district, and the board of governors.

Notwithstanding any provision of this article to the contrary, if the transfer involves a minor change in district boundaries, defined as a transfer of territory involving less than 5 percent of the adult population of the district from which the transfer is being made, the petition may be transmitted directly to the county board of supervisors by the county superintendent of schools, without submission to the county committee on school district organization. The procedure specified in this paragraph may not be utilized more than once every five years.

SEC. 372. Section 74105 of the Education Code is amended to read:

74105. Within 90 days after receipt of the petition, the county committee shall hold one or more public hearings on the petition at a regular or special meeting in each of the districts affected by the petition. Notice of the public hearing shall be given at least 10 days in advance of the date of the hearing to the chief petitioners, to the governing board of all districts affected by the proposed transfer, the board of governors and to all other persons requesting notice of the hearing.

SEC. 373. Section 74106 of the Education Code is amended to read:

74106. (a) The county committee may add to the petition any

appropriate provisions which were not included in the petition as filed, and may amend any provision which was so included.

(b) At least 10 days before the public hearing on the petition, the county committee shall make available to the public, the governing boards affected by the petition, and the board of governors, a description of the petition and a report which includes a description or analysis of all the following:

(1) The rights of the employees in the affected districts to continued employment.

(2) The financial impact of the proposed change on each affected district.

(3) Whether the districts involved will be governed, in part, by provisions of a city charter and, if so, in what way.

(4) A description of the territory affected.

(5) A description of how the property, obligations, and bonded indebtedness of existing districts will be divided.

(6) Whether the reorganization will significantly affect racial or ethnic composition of districts.

(7) Determination of impact of proposed change upon boards of trustees.

(8) A draft statement of the terms of the agreement regarding all conditions of the transfer, when applicable, for consideration by governing boards of affected districts.

(9) Whether the change is compatible with the district master plan of the county.

SEC. 374. Section 74107 of the Education Code is amended to read:

74107. Within 90 days after affording the public an opportunity to comment on the petition, the report, and the recommendations included in the report, the county committee shall forward a copy of the petition and the report documents to each district governing board and the board of governors for review. No transfer shall be made unless a majority of the members of the governing board of the district to which the territory is to be transferred sign a statement agreeing to all conditions of the transfer at a public meeting conducted for that purpose. Upon completion of the public meeting, the receiving governing board shall return the petition and statement of agreement, together with a notice of action, to the county committee.

SEC. 376. Section 74109 of the Education Code is amended to read:

74109. Whenever a county committee approves a petition, within 10 days it shall transmit a copy of the approved petition, together with any related information or recommendations, to the Board of Governors of the California Community Colleges for review.

SEC. 377. Section 74110 of the Education Code is amended to read:

74110. Whenever the county committee rejects a petition, it shall notify the chief petitioners and the board of governors of its action

and provide in writing the basis for rejection.

The county committee need not accept a new petition on the same territory filed within 12 months of its decision.

SEC. 379. Section 74132 of the Education Code is amended to read:

74132. (a) A petition initiated under subdivision (a) or (b) of Section 74131 shall be filed with the county superintendent of schools having jurisdiction over the nondistrict territory.

(b) A petition initiated under subdivision (c) of Section 74131 shall be filed with the county superintendent of schools having jurisdiction over the territory in which the community college district is located.

SEC. 381. Section 74134 of the Education Code is amended to read:

74134. Upon receipt of the petition the county superintendent of schools shall transmit a copy of the petition to the board of governors. Within 30 days after the petition for reorganization is filed, the county superintendent shall examine the petition and, if he or she finds it to be sufficient and signed as required by law, shall transmit the petition simultaneously to each of the following:

(a) The governing board and district superintendent of each district affected by the proposed annexation.

(b) The county superintendent and county committee of each county which has jurisdiction over any district affected by the proposed annexation.

(c) The board of governors.

When applicable, Article 4 (commencing with Section 74180) shall also control.

SEC. 382. Section 74135 of the Education Code is amended to read:

74135. (a) The county committee may add to the petition any appropriate provisions which were not included in the petition as filed and may amend any provision which was so included.

(b) At least 10 days before the public hearing on the petition, the county committee shall make available to the public, to the governing boards affected by the petition, and to the board of governors a description of the petition and a report which includes a description or analysis of the impact of the proposed change upon the following:

(1) Funding of each affected unified or high school and community college district, including determination of level and sources of local property or special taxes to be levied for general purposes of the recipient community college district.

The property tax contribution to the district shall not be less than the proportion that the tax levied in the 1977–78 fiscal year in the territory affected pursuant to former Chapter 8 (commencing with Section 2100) of Part 2 bore to the total property tax levied in that territory in the 1977–78 fiscal year.

Alternative sources of local tax contribution to the recipient

district, as may be permitted by law, shall be included in the committee's report.

(2) Existing property, obligations, and bonded indebtedness.

(3) Racial or ethnic composition of the recipient district.

(4) Governing board of recipient district.

(5) County district master plan.

(6) Any matter considered significant by the county committee.

SEC. 383. Section 74136 of the Education Code is amended to read:

74136. Within 90 days after affording the public an opportunity to comment on the petition, the report, and the recommendations included in the report, the county committee shall forward a copy of the petition and the report to each affected governing board and the board of governors for review.

SEC. 386. Section 74139 of the Education Code is amended to read:

74139. Whenever a county committee approves a petition, within 10 days it shall transmit a copy of the approved petition, together with any related information or recommendations, to the Board of Governors of the California Community Colleges for review.

SEC. 387. Section 74140 of the Education Code is amended to read:

74140. Whenever a county committee rejects a petition, it shall notify the chief petitioners and the board of governors of its action and provide in writing the basis for rejection.

The county committee need not accept a new petition on the same territory filed within 12 months of its decision.

SEC. 390. Section 74153 of the Education Code is amended to read:

74153. Within 30 days after the petition to form a new district is filed, the county superintendent of schools shall examine the petition, and, if the board of governors finds it to be sufficient and signed as required by law, shall transmit the petition simultaneously to each of the following:

(a) The governing board of each component school district and community college district affected by the proposed formation.

(b) The county superintendent and county committee of each county which has jurisdiction over each component school district and community college district affected.

(c) The board of governors.

SEC. 391. Section 74154 of the Education Code is amended to read:

74154. (a) The county committee may add to the petition any appropriate provisions which were not included in the petition as filed and may amend any provision which was so included.

(b) At least 10 days before the public hearing on the petition, the county committee shall make available to the public, to the governing boards of districts affected by the petition, and to the board of governors a description of the petition and a report which

includes a description or analysis of the impact of the proposed change on the following:

(1) Funding of each affected unified or high school and community college district, including a determination of the level and sources of local property or special taxes to be levied for general purposes of the proposed new community college district.

In those instances where the new district is formed exclusively within nondistrict territory, the property tax contribution to the new district shall not be less than the proportion that the tax levied in the 1977–78 fiscal year in the territory affected pursuant to former Chapter 8 (commencing with Section 2100) of Part 2 bore to the total property tax levied in that territory in 1977–78.

Alternative sources of local tax contribution to the recipient district, as may be permitted by law, shall be included in the committee's report.

(2) Property, obligations, and bonded indebtedness of the new district.

(3) Racial or ethnic composition of the recipient district.

(4) Governing board of the new district.

(5) County district master plan.

(6) Any matter considered significant by the county committee.

SEC. 392. Section 74155 of the Education Code is amended to read:

74155. Within 90 days after affording the public an opportunity to comment on the petition, the report, and the recommendations included in the report, a county committee shall forward a copy of the petition and the report to each affected governing board and the board of governors for review.

SEC. 395. Section 74158 of the Education Code is amended to read:

74158. Whenever a county committee approves a petition, within 10 days it shall transmit a copy of the approved petition, together with any related information or recommendations, to the Board of Governors of the California Community Colleges for review.

SEC. 396. Section 74159 of the Education Code is amended to read:

74159. Whenever a county committee rejects a petition, it shall notify the chief petitioners and the board of governors of its action and provide in writing the basis for rejection.

The county committee need not accept a new petition on the same territory filed within 12 months of its decision.

SEC. 399. Section 74202 of the Education Code is amended to read:

74202. Upon receipt of an approved petition, the board of governors may make whatever inquiries or studies are necessary to validate information and recommendations submitted by the county committee prior to making a recommendation to the board of governors. When it is necessary for the Board of Governors of the California Community Colleges to evaluate a reorganization

proposal, each county superintendent of schools and every other county officer in the counties affected and the superintendents of the districts affected and the county committee shall provide the information required to complete the review.

SEC. 405. Section 74270 of the Education Code is amended to read:

74270. (a) The reorganization of any district or districts shall not affect the classification of certificated employees already employed by any district affected. Those employees shall have the same status with respect to their classification by the district, including time served as probationary employees of the district, after the reorganization as they had prior to it. If the reorganization results in the college or other place in which any such employee is employed being maintained by another district, the employee, if a permanent employee of the district which formerly maintained the college or other place of employment, shall be employed as a permanent employee of the district which thereafter maintains the college or other place of employment, unless the employee elects prior to February 1 of the year in which the action will become effective for all purposes to continue in the employ of the first district.

If the employee is a probationary employee of the district which formerly maintained the college or other place of employment, he or she shall be employed by the district which thereafter maintains the college or other place of employment, unless the probationary employee is terminated by the district pursuant to Section 87740 or 87741, and, if not so terminated, his or her status with respect to classification by that district shall be the same as it would have been had the college or other place of employment been continued to be maintained by the district which formerly maintained it. As used in this paragraph, "the college or other place in which any such employee is employed" and all references thereto, includes, but is not limited to, the services or program which, as a result of any reorganization of a district, will be provided by another district, regardless of whether any particular building or buildings in which that service or program was conducted is physically located in the new district and regardless of whether any new district resulting from the reorganization elects to provide for the education of its students by contracting with another school district until the time as the district constructs its own facilities.

(b) The reorganization of any district, or districts, shall not affect the rights of persons employed in positions not requiring certification qualifications to retain the salary, leaves and other benefits which they would have received if the reorganization had not occurred, and in the manner provided in this section:

(1) All employees of every district which is included in any other district shall become employees of the new district.

(2) When a portion of the territory of any district becomes part of another district, employees regularly assigned to perform their duties in the territory affected shall become employees of the

acquiring district. Employees whose assignments pertained to the affected territory, but whose employment situs was not in the territory, may elect to remain with the original district or become employees of the acquiring district.

(3) When the territory of any district is divided between, or among, two or more districts and the original district ceases to exist, employees of the original district regularly assigned to perform their duties in any specific territory of the district shall become employees of the district acquiring the territory. Employees not assigned to specific territory within the original district shall become employees of any acquiring district at the election of the employees.

(4) Employees regularly assigned by the original district to any college in the district shall be employees of the district in which the college is located. Except as provided in this section, nothing in this section shall deprive the governing board of the acquiring district from making reasonable reassignments of duties.

SEC. 406. Section 74271 of the Education Code is repealed.

SEC. 407. Section 74282 of the Education Code is repealed.

SEC. 408. Section 74283 of the Education Code is repealed.

SEC. 409. Section 74290 of the Education Code is amended to read:

74290. (a) This article shall apply only to the reallocation of bonded indebtedness incurred prior to July 1, 1978.

(b) When a district is reorganized, the liability for taxation for the outstanding bonded indebtedness of the district or the territory affected thereby is as provided in this article. The authorities whose duty it is to levy taxes for the payment of principal and interest on the outstanding bonds shall levy the taxes upon the districts affected in such proportions as are provided in, or are determined under, the authority of this article.

(c) No territory shall be taken from any district having any outstanding bonded indebtedness and made a part of another district where the action, if taken, would so reduce the last equalized assessed valuation of a district from which the territory was taken that the outstanding bonded indebtedness of the district would exceed 5 percent of the assessed valuation remaining in the district for the level maintained, on the date the reorganization is effective.

(d) When any district is in any manner merged with one or more districts so as to form a single district by any procedure, the district so formed is liable for all of the outstanding bonded indebtedness of the districts united or merged.

(e) When territory is taken from one district and transferred to another district and the area transferred contains no college property or buildings, the territory shall drop any liability for outstanding bonded indebtedness in the district of which it was formerly a part and shall automatically assume its proportionate share of the outstanding bonded indebtedness of the district of which it becomes a part.

(f) When territory is taken from one district and transferred to

another district by any procedure and the area transferred contains college buildings or property, the district to which the territory is annexed shall take possession of the building and the equipment on the day when the annexation becomes effective for all purposes. The territory transferred shall cease to be liable for the bonded indebtedness of the district of which it was formerly a part and shall automatically assume its proportionate share of the outstanding bonded indebtedness of any district of which it becomes a part.

(g) The acquiring district shall pay the original district the greatest of the amounts determined under paragraph (1) or (2).

(1) The proportionate share of the outstanding bonded indebtedness of the original district, which proportionate share shall be in the ratio which the total assessed valuation of the transferring territory bears to the total assessed valuation of the original district in the year immediately preceding the date on which the annexation is effective for all purposes. This ratio shall be used each year until the bonded indebtedness for which the acquiring district is liable has been repaid.

(2) That portion of the outstanding bonded indebtedness of the original district which was incurred for the acquisition or improvement of school lots or buildings, or fixtures located therein, and situated in the territory transferred.

(h) The county board of supervisors shall compute for the reorganized districts an annual tax rate for bond interest and redemption which will include the bond interest and redemption on the outstanding bonded indebtedness specified in paragraph (1) or (2) of subdivision (g). The tax rate shall be levied in excess of any other ad valorem property tax authorized or required by law and shall not be included in the computation of the limitation specified in subdivision (a) or Section 1 of Article XIII A of the California Constitution.

SEC. 410. Section 74291 of the Education Code is repealed.

SEC. 411. Section 74292 of the Education Code is repealed.

SEC. 412. Section 74293 of the Education Code is repealed.

SEC. 413. Section 74294 of the Education Code is repealed.

SEC. 414. Section 74295 of the Education Code is repealed.

SEC. 415. Section 76000 of the Education Code is amended to read:

76000. The governing board of a community college district shall admit to the community college any California resident, and may admit any nonresident, possessing a high school diploma or the equivalent thereof.

The governing board may admit to the community college any apprentice, as defined in Section 3077 of the Labor Code, who, in the judgment of the governing board, is capable of profiting from the instruction offered.

The governing board may by rule determine whether there shall be admitted to the community college any other person who is over 18 years of age and who, in the judgment of the board, is capable of

profiting from the instruction offered. If the governing board determines to admit other persons, any such person shall be admitted as a provisional student and thereafter shall be required to comply with the rules and regulations prescribed by the Board of Governors of the California Community Colleges pertaining to the scholastic achievement and other standards to be met by provisional or probationary students, as a condition to being readmitted in any succeeding semester. This paragraph shall not apply to persons in attendance in special classes and programs established for adults pursuant to Chapter 3 (commencing with Section 78400) of Part 48, or to any persons attending on a part-time basis only.

SEC. 416. Section 76001 of the Education Code is amended to read:

76001. (a) The governing board of a community college district may admit to any community college under its jurisdiction as a special part-time student any student who is eligible to attend community college pursuant to Section 48800.

The attendance of a student at community college as a special part-time student pursuant to this section is authorized attendance, for which the community college shall be credited or reimbursed pursuant to Section 48802. Credit for courses completed shall be at the level determined to be appropriate by the school district and community college district governing boards.

For purposes of this section, a special part-time student may enroll in up to, and including, 12 units per semester, or the equivalent thereof, at the community college.

(b) The governing board of a community college district may admit to any community college under its jurisdiction as a special full-time student any student who is eligible to attend community college pursuant to Section 48800.5, and who, in the opinion of the college president, could benefit from the course or class.

The attendance of a student at a community college as a special full-time student pursuant to this section is authorized attendance, for which the community college shall be credited pursuant to Section 48800.5.

(c) The governing board of a community college district may admit to the summer session of any community college under its jurisdiction as a special student any student, with parental consent:

(1) Whose admission to summer session is recommended by the principal of the school which the student attends.

(2) Who has demonstrated adequate preparation in the discipline to be studied.

(3) Who has availed himself or herself of all opportunities to enroll in an equivalent course at his or her school of attendance.

(d) A principal may recommend a student as a special student pursuant to rules and regulations that may be adopted by the governing board of the school district. The principal of a school shall not recommend a number of students who have completed a particular grade in excess of 5 percent of the total number of students

in the school who have completed that grade immediately prior to the time of recommendation.

(e) The attendance of a special summer session student at a community college pursuant to this section shall be credited to the district maintaining the community college for the purposes of allowances and apportionments from the State School Fund. The student shall receive credit for community college courses that he or she completes, in a manner determined to be appropriate by the governing boards of the school district and the community college district.

(f) Subdivisions (a) and (b) and Sections 48800 to 48802, inclusive, do not apply to the special students authorized to be admitted to a community college summer session pursuant to this section.

SEC. 417. Section 76001.5 of the Education Code is repealed.

SEC. 418. Section 76002 of the Education Code is repealed.

SEC. 419. Section 76006 of the Education Code is repealed.

SEC. 420. Section 76020 of the Education Code is amended to read:

76020. (a) The governing body of any community college district may exclude students of filthy or vicious habits, or students suffering from contagious or infectious diseases.

(b) The governing board of the community college may exclude from attendance on regular classes any student whose physical or mental disability is such as to cause his or her attendance to be inimical to the welfare of other students.

SEC. 421. Section 76021 of the Education Code is repealed.

SEC. 431. Article 8 (commencing with Section 76130) of Chapter 1 of Part 47 of the Education Code is repealed.

SEC. 432. Section 76142 of the Education Code is repealed.

SEC. 433. Section 76160 of the Education Code is repealed.

SEC. 445. Chapter 2 (commencing with Section 76300) of Part 47 of the Education Code is repealed.

SEC. 446. Section 76400 of the Education Code is repealed.

SEC. 447.5. Section 76403 of the Education Code is amended to read:

76403. (a) Notwithstanding any other provision of law, the governing board of any community college district shall cooperate with the local health officer in measures necessary for the prevention and control of communicable diseases in students.

(b) A registered nurse, acting under the direction of a supervising physician and surgeon, may perform immunization techniques within the course of a school immunization program provided that the administration of an immunizing agent is upon the standing orders of a supervising physician and surgeon and in accordance with written regulations which the State Department of Health Services may adopt pursuant to Section 303.5 of the Health and Safety Code.

(c) While nothing in this section shall be construed to require the physical presence of the supervising physician and surgeon, the supervising physician and surgeon under whose direction the

registered nurse is acting shall require the nurse to:

(1) Satisfactorily demonstrate competence in the administration of immunizing agents, including knowledge of all indications and contraindications for the administration of these agents, and in the recognition and treatment of any emergency reactions to agents which constitute a danger to the health or life of the person receiving the immunizations; and

(2) Possess medications and equipment required, in the medical judgment of the supervising physician and surgeon, to treat any emergency conditions and reactions caused by the immunizing agents and which constitute a danger to the health or life of the person receiving the immunization, and to demonstrate the ability to administer the medications and to utilize the equipment as necessary.

SEC. 448. Section 76405 of the Education Code is repealed.

SEC. 449. Section 76407 of the Education Code is amended to read:

76407. (a) Notwithstanding any provision of any law, no community college district, officer of any community college district, college president or superintendent, physician, or hospital treating any minor enrolled in any school in any district shall be held liable for the reasonable treatment of a minor without the consent of a parent or guardian of the child when the minor is ill or injured during regular schools hours, requires reasonable medical treatment, and the parent or guardian cannot be reached, unless the parent or guardian has previously filed with the district a written objection to any medical treatment other than first aid.

(b) Notwithstanding any provision of any law, no physician and surgeon who in good faith and without compensation renders voluntary emergency medical assistance to a participant in a community college athletic event or contest at the site thereof, or during transportation to a health care facility, for an injury suffered in the course of the event or contest, shall be liable for any civil damages as a result of any acts or omissions by the physician and surgeon in rendering the emergency medical care. The immunity granted by this paragraph shall not apply in the event of an act or omission constituting gross negligence.

SEC. 450. Section 76408 of the Education Code is repealed.

SEC. 451. Section 76409 of the Education Code is repealed.

SEC. 452. Article 2 (commencing with Section 76420) of Chapter 3 of Part 47 of the Education Code is repealed.

SEC. 453. Article 4 (commencing with Section 76450) of Chapter 3 of Part 47 of the Education Code is repealed.

SEC. 454. Section 76470 of the Education Code is repealed.

SEC. 455. Section 78001 of the Education Code is repealed.

SEC. 455.1. Section 78002 of the Education Code is repealed.

SEC. 455.2. Section 78003 of the Education Code is repealed.

SEC. 455.3. Section 78004 of the Education Code is repealed.

SEC. 455.4. Section 78005 of the Education Code is repealed.

SEC. 455.5. Section 78006 of the Education Code is repealed.

SEC. 455.6. Section 78007 of the Education Code is repealed.

SEC. 455.7. Section 78010 of the Education Code is repealed.

SEC. 455.8. Section 78011 of the Education Code is repealed.

SEC. 455.9. Section 78012 of the Education Code is repealed.

SEC. 456. Section 78031 of the Education Code is amended to read:

78031. (a) Subject to Article 1 (commencing with Section 76000) of Chapter 1 of Part 47, a district resident, as defined for purposes of Part 41 (commencing with Section 68000), shall be admitted to a community college in another district without regard to district boundaries, unless the Board of Governors of the California Community Colleges finds that compelling, extenuating circumstances exist under which the application of this policy would be substantially detrimental to the opportunity of students to obtain a quality education.

(b) No district shall restrict the admission of its residents into a community college of another district, nor shall it restrict the admission of residents of another district into its community college or colleges, except as authorized under Section 78032.

SEC. 456.1. Section 78032 of the Education Code is amended to read:

78032. (a) Notwithstanding Section 78031, the Board of Governors of the California Community Colleges may, pursuant to a finding that one or more of the following concerns in any community college district requires the restriction of interdistrict attendance, impose one or more restrictions upon interdistrict attendance with regard to that district as it may deem necessary:

(1) Protection of the financial health of the district, and of educational program integrity, including, but not limited to, maintenance of the appropriate quality and scope of student educational opportunity.

(2) The need to avoid overcrowding, in light of the available space in the district.

(3) The priority that resident students not be displaced by students who do not reside in the district.

(4) The avoidance of any serious disruption in the ethnic balance of the student population of any affected district.

(b) No restriction adopted under subdivision (a) shall apply for a period of longer than two years, absent additional action of the board of governors to continue that restriction.

(c) (1) No community college district shall recruit any student who is a resident of any other community college district, except where an agreement exists between those districts authorizing each district to recruit within the boundaries of the other district.

(2) If, pursuant to an agreement as described in paragraph (1), a community college district recruits within the boundaries of another community college district, it shall recruit from all high schools within that other district, and may not favor any high schools over

other high schools within that other district unless it is intended to improve the racial balance of the recruiting community college district.

(3) "Recruiting," for purposes of this section, means either or both of the following actions by a community college district, where the apparent purpose is to encourage student attendance in that district:

(A) The mailing by a community college district, to any address not within its boundaries, of class schedules or other written information, except to current or former students of the district or at the addressee's request.

(B) The personal visit by a representative of the community college district to any high school, except in response to an invitation from the school district of which the high school is a part.

"Recruiting" does not include, for this purpose, any information provided by a community college district through radio, television, or any newspaper or other publication that is not published or otherwise issued by the district, and for which distribution is not limited to residents of the district.

(d) The board of governors shall authorize the Chancellor of the California Community Colleges to retain in any fiscal year an amount of up to 5 percent of the appropriation calculated under Chapter 5 (commencing with Section 84700) of Part 50 as a penalty applicable to any community college district that violates this article, including, but not limited to, any restriction imposed by the board of governors under this section. Any funds retained pursuant to this subdivision shall revert to the General Fund.

(e) The board of governors shall annually report to the Legislature and the Governor regarding any restrictions imposed pursuant to subdivision (a), statistical information relating to interdistrict attendance, and any retention of funds pursuant to subdivision (c).

SEC. 456.2. Section 78034 is added to the Education Code, to read:

78034. (a) In addition to classification as a resident pursuant to Section 68040, each community college student shall be classified as either a district resident or a nondistrict resident.

(b) For purposes of classification as a district resident or nondistrict resident, the following definitions shall be applicable:

(1) "District" means a community college district maintaining one or more community colleges.

(2) "District resident" means a resident who has residence within a district in the state.

(3) "Nondistrict resident" means a resident who does not have residence within a district in the state, or means a student who: (A) within a 39-month period immediately preceding the residence determination date, was graduated from a high school which is situated in territory not within a district, and (B) whose parent or parents reside in this territory.

SEC. 457. Article 2.5 (commencing with Section 78040) of

Chapter 1 of Part 48 of the Education Code is repealed.

SEC. 458. Article 3 (commencing with Section 78050) of Chapter 1 of Part 48 of the Education Code is repealed.

SEC. 459. Chapter 1.5 (commencing with Section 78100) is added to Part 48 of the Education Code, to read:

CHAPTER 1.5. LIBRARY SERVICES

78100. The governing board of each community college district shall provide school library services for the students and faculty of the district by establishing and maintaining community college libraries or by contractual arrangements with another public agency.

78101. The board of governors shall adopt standards, rules, and regulations for community college library services.

78103. The libraries shall be open for the use of the faculty and the students of the community college district during the schoolday. In addition, the libraries may be open at other hours, including evenings and Saturdays, as the governing board may determine. Libraries open to serve students during evening and Saturday hours shall be under the supervision of certificated personnel or those employed pursuant to minimum standards adopted by the board of governors.

SEC. 459.5. Article 1 (commencing with Section 78200.5) of Chapter 2 of Part 48 of the Education Code is repealed.

SEC. 460. Section 78211.5 of the Education Code is amended to read:

78211.5. (a) The Board of Governors of the California Community Colleges shall initially provide for full implementation of the matriculation services specified in Section 78212 in as many community colleges as the funds appropriated for this purpose allow.

(b) Because of the need to develop and evaluate data on a standard statewide basis concerning the implementation and effectiveness of the matriculation services described in this article, any college or district receiving funding under this article shall agree to carry out its provisions as specified, but shall be bound to that agreement only for the period during which funding is received pursuant to this article. The obligations of the college or district under the agreement shall include, but not be limited to, the expenditure of funds received pursuant to this article for only those matriculation services approved by the board of governors and the contribution toward the purposes of this article of matching funds as the board of governors may require pursuant to Section 78216.

SEC. 461. Section 78213 of the Education Code is amended to read:

78213. (a) No district or college may use any assessment instrument for the purposes of this article without the authorization of the board of governors. The board of governors may adopt a list of authorized assessment instruments pursuant to the policies and procedures developed pursuant to this section and the intent of this

article. The board of governors may waive this requirement as to any assessment instrument pending evaluation.

(b) The board of governors shall review all assessment instruments to ensure that they meet all of the following requirements:

(1) Assessment instruments shall be sensitive to cultural and language differences between students.

(2) Assessment instruments shall be used as an advisory tool to assist students in the selection of an educational program.

(3) Assessment instruments shall not be used to exclude students from admission to community colleges.

(c) The board of governors shall establish an advisory committee to review and make recommendations concerning all assessment instruments used by districts and colleges pursuant to this article.

SEC. 462. Section 78216 of the Education Code is amended to read:

78216. (a) The Legislature recognizes that community college districts are currently funding various components of student matriculation through existing counseling, assessment, and other student services, but that adequate student matriculation cannot be realized without supplemental funding support.

(b) The board of governors shall develop a formula for funding student matriculation services at community colleges. The formula shall include the requirement that the districts or colleges contribute matching funds in an amount to be established by the board of governors in each case, and shall reflect, but not be limited to, all of the following considerations:

(1) The number of students to receive matriculation services at each college.

(2) The levels of support for matriculation services provided at each college prior to July 1, 1985, and the need for funding assistance in the implementation of the program set forth in this article.

(3) The relative needs for matriculation services, based on special student populations such as low-income students, students with language differences, students with physical and learning disabilities, and students in need of remedial instruction.

(4) The requirement that funds for matriculation services be expended only for services approved by the board of governors.

(5) The requirement that any district or college receiving funding pursuant to this section agree to implement this article during the period in which it receives that funding.

(6) The need for computer hardware and software to provide approved matriculation services, and for institutional research personnel for ongoing evaluation.

(c) The board of governors shall require participating colleges to develop a plan for student matriculation that reflects all of the following:

(1) A method for providing the services specified in Section 78212.

(2) The college budget for the matriculation services pursuant to

Sections 78212 and 78214.

(3) The development and training of staff and faculty to implement the matriculation services.

(4) In multicampus districts, the coordination of the college matriculation plan with other college plans.

(5) Computerized information services and institutional research and evaluation necessary for implementation of this article.

(d) The board of governors may allocate up to 5 percent of the total funds appropriated for student matriculation for state administrative operations to carry out the intent of this article, subject to the review of the annual budget process.

SEC. 463. Section 78217 of the Education Code is amended to read:

78217. (a) By no later than January 30, 1987, and prior to the allocation of any funding for purposes of this article to local districts, the board of governors shall provide the Department of Finance, Legislative Analyst, California Postsecondary Education Commission, and the education policy committees and the fiscal committees of the Legislature with a comprehensive management plan for implementation of matriculation programs pursuant to this article.

(b) On or before March 15, 1989, the board of governors shall submit a report to the Legislature evaluating the effectiveness of those community college matriculation programs receiving funding under this article for the 1986–87 academic year. The report shall cover operation of the programs during the 1986–87 and 1987–88 fiscal years, and shall include the board of governors' recommendations regarding the improvement of student matriculation, the continued operation of student matriculation services, and the funding of those services. The board of governors shall include in the report information on the success rate of students who enroll in courses contrary to the recommendations and advice of college advisement staff.

(c) On or before March 15 of each year thereafter, the board of governors shall provide a progress report to the Legislature on the implementation of this article. The board of governors may require participating districts or colleges to provide data for the completion of these reports.

(d) No later than January 1, 1986, the board of governors shall appoint an advisory committee to assist in the development of the evaluation required by this section; however, the Legislature recognizes that to promote the effective implementation of this program, the board of governors may wish to appoint the advisory committee prior to that date.

(e) On or before April 1, 1988, the board of governors shall submit a report to the Legislature evaluating the comparative utility of matriculation services to students with differing educational objectives.

SEC. 464. Section 78220 of the Education Code is repealed.

SEC. 465. Section 78221 of the Education Code is repealed.

SEC. 466. Section 78222 of the Education Code is repealed.

SEC. 467. Section 78230 of the Education Code is amended to read:

78230. No student enrolled in any community college shall be required to enroll in any course in military science and tactics offered by the community college.

SEC. 468. Section 78240 of the Education Code is repealed.

SEC. 469. Section 78241 of the Education Code is repealed.

SEC. 470. Section 78242 of the Education Code is repealed.

SEC. 471. Section 78243 of the Education Code is repealed.

SEC. 472. Section 78244 of the Education Code is repealed.

SEC. 473. Section 78245 of the Education Code is repealed.

SEC. 474. Section 78246 of the Education Code is repealed.

SEC. 475. Section 78247 of the Education Code is repealed.

SEC. 476. Section 78248 of the Education Code is repealed.

SEC. 477. Section 78249 of the Education Code is amended to read:

78249. (a) Notwithstanding any provisions of this code or the Labor Code to the contrary, the community college district under whose supervision work-experience education, or occupational training classes held in the community, as defined by regulations adopted by the board of governors, are provided shall be considered the employer under Division 4 (commencing with Section 3200) of the Labor Code of persons receiving the training unless the persons during the training are being paid a cash wage or salary by a private employer, or unless the person or firm under whom those persons are receiving work experience or occupational training elects to provide workers' compensation insurance. An apprentice, while attending related and supplemental instruction classes, shall be considered to be in the employ of the apprentice's employer and not subject to this section, unless the apprentice is unemployed. Whenever the work-experience education, or occupational training classes held in the community, are under the supervision of a regional occupational center or program operated by two or more community college districts pursuant to Section 52301, the district of residence of the persons receiving the training shall be deemed the employer for the purposes of this section.

(b) Sections 1292, 1293, and 1294 of the Labor Code shall not apply to work-experience education programs established pursuant to this article if the work-experience coordinator determines that the students have been sufficiently trained in the employment or work otherwise prohibited, if parental approval is obtained, and the principal or the counselor of the student has determined that the progress of the student toward graduation will not be impaired.

SEC. 478. Section 78250 of the Education Code is repealed.

SEC. 479. Section 78270 of the Education Code is repealed.

SEC. 480. Section 78272 of the Education Code is repealed.

SEC. 481. Article 6 (commencing with Section 78280) of Chapter

2 of Part 48 of the Education Code is repealed.

SEC. 482. Section 78300 of the Education Code is amended to read:

78300. (a) The governing board of any community college district is authorized without the approval of the Board of Governors of the California Community Colleges to establish and maintain community service classes in civic, vocational, literacy, health, homemaking, technical and general education, including, but not limited to, classes in the fields of music, drama, art, handicraft, science, literature, nature study, nature contacting, aquatic sports and athletics. These classes shall be designed to provide instruction and to contribute to the physical, mental, moral, economic, or civic development of the individuals or groups enrolled therein.

(b) Community service classes shall be open for the admission of adults and of those minors as in the judgment of the governing board may profit therefrom.

(c) Governing boards shall not expend state General Fund moneys to establish and maintain community service classes. Governing boards may charge students enrolled in community service classes a fee not to exceed the cost of maintaining community service classes, or may provide instruction in community service classes for remuneration by contract, or with contributions or donations of individuals or groups. The board of governors shall adopt guidelines defining the acceptable reimbursable costs for which a fee may be charged.

SEC. 483. Section 78301 of the Education Code is repealed.

SEC. 484. Section 78302 of the Education Code is repealed.

SEC. 485. Section 78303 of the Education Code is repealed.

SEC. 486. Section 78304 of the Education Code is repealed.

SEC. 487. Section 78305 of the Education Code is repealed.

SEC. 488. Section 78401 of the Education Code is amended to read:

78401. (a) The governing board of any community college district shall have power with the approval of the board of governors to establish and maintain classes for adults for the purpose of providing instruction in civic, vocational, literacy, health, homemaking, technical and general education.

(b) Classes for adults shall conform to any course of study and graduation requirements otherwise imposed by law or under the authority of law.

(c) Classes for adults shall be open for the admission of adults and of any minors who, in the judgment of the governing board, may be qualified for admission thereto.

(d) The board of governors shall establish standards, including standards of attendance, curriculum, administration, and guidance and counseling service for classes for adults as a basis for the several apportionments of state funds provided herein for the support of these classes.

(e) The governing board of any community college district

maintaining an adult school shall prescribe the requirements for the granting of diplomas.

SEC. 489. Section 78402 of the Education Code is repealed.

SEC. 490. Section 78403 of the Education Code is repealed.

SEC. 491. Section 78405 of the Education Code is repealed.

SEC. 492. Section 78407 of the Education Code is repealed.

SEC. 493. Section 78409 of the Education Code is repealed.

SEC. 494. Section 78412 of the Education Code is repealed.

SEC. 495. Article 2 (commencing with Section 78430) of Chapter 3 of Part 48 of the Education Code is repealed.

SEC. 496. Section 78440 of the Education Code is repealed.

SEC. 497. Section 78440.5 of the Education Code is repealed.

SEC. 498. Section 78441 of the Education Code is repealed.

SEC. 499. Section 78442 of the Education Code is repealed.

SEC. 500. Article 5 (commencing with Section 78460) of Chapter 3 of Part 48 of the Education Code is repealed.

SEC. 503. Section 78900 of the Education Code is amended to read:

78900. (a) No publisher or manufacturer of instructional materials, nor any of his or her representatives, shall offer or give any emolument, money, or other valuable thing, or any inducement, to any community college official to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional material.

(b) No community college official shall accept any emolument, money, or other valuable thing, or any inducement to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional material.

(c) Any publisher or manufacturer of instructional materials or his or her representative, or any community college official who violates any of the provisions of this article is guilty of a misdemeanor. Any community college official who violates this article shall, in addition to any other penalty, be removed from his or her official position.

(d) Nothing in this chapter shall be construed to prevent any publisher, manufacturer, or agent from supplying for purposes of examination necessary sample copies of instructional materials to any community college official.

(e) Nothing in this chapter shall be construed to prevent a community college official from receiving sample copies of instructional materials.

(f) Nothing contained in this chapter shall be construed to prohibit or restrict a community college official from receiving royalties or other compensation from the publisher or manufacturer of instructional materials written, designed, or prepared by the community college official, and adopted or purchased by any governing board, other than compensation paid as a commission to the community college official for negotiating sales to governing boards. No district shall have or claim the right to receive a royalty or other compensation due to any community college official

employed by the district unless the instructional material was written or prepared during the normal schoolday during which the community college official is required by the district to be on duty.

SEC. 504. Section 78902 of the Education Code is repealed.

SEC. 505. Section 78903 of the Education Code is repealed.

SEC. 506. Section 78904 of the Education Code is repealed.

SEC. 507. Section 78905 of the Education Code is repealed.

SEC. 508. Section 78906 of the Education Code is repealed.

SEC. 509. Section 78907 of the Education Code is amended to read:

78907. The use by any person, including a student, of any electronic listening or recording device in any classroom without the prior consent of the instructor is prohibited, except as necessary to provide reasonable auxiliary aids and academic adjustments to disabled students. Any person, other than a student, who willfully violates this section shall be guilty of a misdemeanor.

Any student violating this section shall be subject to appropriate disciplinary action.

This section shall not be construed as affecting the powers, rights, and liabilities arising from the use of electronic listening or recording devices as provided for by any other provision of law.

SEC. 510. Article 2 (commencing with Section 78920) of Chapter 7 of Part 48 of the Education Code is repealed.

SEC. 511. Article 3 (commencing with Section 78930) of Chapter 7 of Part 48 of the Education Code is repealed.

SEC. 512. Article 1 (commencing with Section 79000) of Chapter 8 of Part 48 of the Education Code is repealed.

SEC. 513. Article 2 (commencing with Section 79010) of Chapter 8 of Part 48 of the Education Code is repealed.

SEC. 513.5. Section 79020 of the Education Code is amended to read:

79020. Except as otherwise provided the community colleges shall continue in session or close on specified holidays as follows:

(a) The community colleges shall close on January 1st, the third Monday in January, commencing in the 1989–90 fiscal year, known as "Dr. Martin Luther King, Jr. Day," February 12th known as "Lincoln Day," the third Monday in February known as "Washington Day," the last Monday in May known as "Memorial Day," July 4th, the first Monday in September known as "Labor Day," November 11th known as "Veterans Day," that Thursday in November proclaimed by the President as "Thanksgiving Day," and December 25th.

(b) Any contractual provision between any community college district and its employees in effect on the effective date of the act that adds this subdivision shall prevail over any conflict regarding Dr. Martin Luther King, Jr. Day until the termination date of the contract or upon termination by mutual agreement of the parties, whichever occurs first.

(c) The Governor in appointing any other day for a public fast,

thanksgiving, or holiday may provide whether the community colleges shall close on the day. If the Governor does not provide whether the community colleges shall close, they shall continue in session on all special or limited holidays appointed by the Governor, but shall close on all other days appointed by the Governor for a public fast, thanksgiving, or holiday.

(d) The community colleges shall close on every day appointed by the President as a public fast, thanksgiving, or holiday, unless it is a special or limited holiday.

(e) The community colleges shall continue in session on all legal holidays other than those designated by or pursuant to this section, and shall hold proper exercises commemorating the day.

(f) When any of the holidays on which the schools would be closed fall on Sunday, the community colleges shall close on the Monday following, except that (1) if Lincoln Day falls on a Sunday, the community colleges may observe this holiday on the preceding or following Friday, the following Monday, or the following Tuesday, and maintain classes on the date specified in subdivision (a) where applicable, or (2) if Lincoln Day falls on a Monday, the community colleges may observe this holiday on the preceding or following Friday, that Monday, or the following Tuesday, and maintain classes on the date specified in subdivision (a) where applicable.

(g) When any of the holidays on which the schools would be closed, except Lincoln Day, fall on Saturday, the community colleges shall close on the preceding Friday, and that Friday shall be declared a state holiday.

(h) If any holiday on which the community colleges are required to close pursuant to subdivision (a) occurs under federal law on a date different than the date specified in subdivision (a), the governing board of any community college district may close the community colleges of the district on the date recognized by federal law and maintain classes on the date specified in subdivision (a).

(i) When Veterans Day would fall on Tuesday, the governing board of a community college district may close the colleges on the preceding Monday, and maintain classes on the date specified in subdivision (a). When Veterans Day would fall on Wednesday, the governing board of a community college district may close the colleges on either the preceding Monday or the following Friday, and maintain classes on the date specified in subdivision (a). When Veterans Day would fall on Thursday, the governing board of a community college district may close the colleges on the following Friday, and maintain classes on the date specified in subdivision (a).

(j) When Lincoln Day would fall on Tuesday, the governing board of a community college district may close the colleges on the preceding Monday, the preceding Friday, or the following Friday, and maintain classes on the date specified in subdivision (a) where appropriate. When Lincoln Day would fall on Wednesday, the governing board of a community college district may close the colleges on the preceding Monday, the preceding Friday, or the

following Friday, and maintain classes on the date specified in subdivision (a). When Lincoln Day would fall on Thursday, the governing board of a community college district may close the colleges on the preceding Friday or the following Friday, and maintain classes on the date specified in subdivision (a). When Lincoln Day falls on Saturday, the governing board of a community college district may close the colleges on the preceding Friday or the following Friday, and maintain classes on the date specified in subdivision (a) where appropriate.

(k) Nothing in this section is to be interpreted as authorizing a community college district governing board to maintain community colleges in its district for a lesser number of days during the college year than the minimum established by law.

SEC. 513.7. Section 79021 of the Education Code is amended to read:

79021. Notwithstanding any other provision of this article, whenever the Governor appoints any other day as a holiday and does not provide for the closing of the community colleges, but the community colleges do close, the closing shall be deemed a closing for a holiday declared by the governing board.

SEC. 514. Section 79022 of the Education Code is repealed.

SEC. 515. Section 79023 of the Education Code is repealed.

SEC. 516. Section 79024 of the Education Code is repealed.

SEC. 517. Section 79025 of the Education Code is repealed.

SEC. 518. Section 79026 of the Education Code is repealed.

SEC. 519. Section 79027 of the Education Code is repealed.

SEC. 520. Section 79027.5 of the Education Code is repealed.

SEC. 521. Section 79028 of the Education Code is repealed.

SEC. 522. Section 79029 of the Education Code is repealed.

SEC. 523. Section 79031 of the Education Code is repealed.

SEC. 524. Section 79032 of the Education Code is repealed.

SEC. 526. Section 79121 of the Education Code is repealed.

SEC. 527. Section 79122 of the Education Code is repealed.

SEC. 528. Section 79123 of the Education Code is repealed.

SEC. 529. Section 79124 of the Education Code is repealed.

SEC. 530. Section 79153 of the Education Code is repealed.

SEC. 531. Section 79154 of the Education Code is amended to read:

79154. The Board of Governors of the California Community Colleges, in conjunction with the State Department of Social Services and the State Employment Development Department, shall adopt guidelines for the cooperative agencies resources for education programs. The board of governors shall be responsible for the administration of the funds for the program.

SEC. 532. Section 79155 of the Education Code is amended to read:

79155. For the 1983–84 fiscal year and each fiscal year thereafter, this article shall be operative only if funds are specifically appropriated for the purposes of the cooperative agencies resources

for education programs pursuant to this article.

SEC. 533. Section 81000 of the Education Code is repealed.

SEC. 534. Section 81005 of the Education Code is repealed.

SEC. 535. Section 81006 of the Education Code is repealed.

SEC. 536. Section 81008 of the Education Code is repealed.

SEC. 537. Section 81009 of the Education Code is repealed.

SEC. 538. Section 81033 of the Education Code is amended to read:

81033. (a) The governing board of a community college district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 81131 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective college site is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geological hazard damage.

The geological and soil engineering studies of the site shall be of a nature as will preclude siting of a college in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is an area which is identified as a special studies zone on any map, or maps, compiled by the State Geologist pursuant to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code. A copy of the report of each investigation conducted pursuant to this section shall be submitted to the board of governors.

(b) Geological and soil engineering studies as described in subdivision (a) shall be made, within the boundaries of any special studies zone, for the construction of any building as defined in Section 81131 or, if the estimated cost exceeds twenty thousand dollars ($20,000), for the reconstruction or alteration of or addition to any such building for work which alters structural elements. The Department of General Services may require similar geological and soil engineering studies for the construction or alteration of any building on a site located outside of the boundaries of any special

studies zone. These studies need not be made if the site under consideration has been the subject of adequate prior studies.

No building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 7 (commencing with Section 81130) and to the Chancellor's office of the California Community Colleges. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure.

(c) To promote the safety of students, comprehensive community planning, and greater educational usefulness of community college sites, the governing board of each community college district, if the proposed site is within two miles, measured by air line, of that point on an airport boundary which is nearest the site and excluding them if the property is not so located, before acquiring title to property for a new community college site or for an addition to a present site, shall give the board of governors notice in writing of the proposed acquisition and shall submit any information required by the board of governors.

Immediately after receiving notice of the proposed acquisition of property which is within two miles, measured by air line, of that point on an airport boundary which is nearest the site, the board of governors shall notify the Division of Aeronautics of the Department of Transportation, in writing, of the proposed acquisition. The Division of Aeronautics shall make an investigation and report to the board of governors within 25 days after receipt of the notice. If the Division of Aeronautics is no longer in operation, the board of governors shall, in lieu of notifying the Division of Aeronautics, notify the Federal Aviation Administration or any other appropriate agency, in writing, of the proposed acquisition for the purpose of obtaining from the authority or other agency any information or assistance it may desire to give.

The board of governors shall investigate the proposed site and within 30 days after receipt of the notice shall submit to the governing board a written report and its recommendations concerning acquisition of the site. The governing board shall not acquire title to the property until the report of the board of governors has been received. If the report does not favor the acquisition of the property for a community college site or an addition to a present community college site, the governing board shall not acquire title to the property until 30 days after the department's report is received and until the board of governors' report has been read at a public hearing duly called after 10 days' notice published once in a newspaper of general circulation within the community college district, or if there is no such newspaper, then in a newspaper of general circulation within the county in which the

property is located.

(d) If, with respect to a proposed site located within two miles of an operative airport runway, the report of the board of governors submitted to a community college district governing board under subdivision (c) does not favor the acquisition of the site on the sole or partial basis of the unfavorable recommendation of the Division of Aeronautics of the Department of Transportation, no state agency or officer shall grant, apportion, or allow to that community college district for expenditure in connection with that site, any state funds otherwise made available under any state law whatever for community college site acquisition or college building construction, or for expansion of existing sites and buildings, and no funds of the community college district or of the county in which the district lies shall be expended for such purposes. However, the provisions of this section shall not be applicable to sites acquired prior to January 1, 1966, nor to any additions or extensions to those sites.

If the recommendation of the Division of Aeronautics is unfavorable, the recommendation shall not be overruled without the express approval of the board of governors and the State Allocation Board.

(e) No action undertaken by the board of governors or by any other state agency or by any political subdivision pursuant to this chapter, or in compliance with this chapter, shall be construed to affect any rights arising under the provisions of Section 19 of Article I of the California Constitution.

SEC. 539. Section 81033.5 of the Education Code is repealed.

SEC. 540. Section 81035 of the Education Code is repealed.

SEC. 541. Section 81036 of the Education Code is repealed.

SEC. 542. Section 81038 of the Education Code is repealed.

SEC. 543. Section 81039 of the Education Code is repealed.

SEC. 544. Section 81130 of the Education Code is amended to read:

81130. The Department of General Services under the police power of the state shall supervise the design and construction of any school building or, if the estimated cost exceeds twenty thousand dollars ($20,000), the reconstruction or alteration of or addition to any school building, to ensure that plans and specifications comply with the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, and to ensure that the work of construction has been performed in accordance with the approved plans and specifications, for the protection of life and property. Nothing in this section shall be construed to allow a community college district to perform work with its own forces in excess of the limitations set forth in Article 41 (commencing with Section 20650) of Part 3 of Division 2 of the Public Contract Code.

Whenever repairs due to fire damage must be made to any school building previously approved by the Department of General Services, the approved plans and specifications used in the original

work under then existing rules, regulations, and building standards may be used without modification, providing all other provisions of this article are carried out.

SEC. 545. Section 81130.5 of the Education Code is amended to read:

81130.5. (a) The provisions of this article do not apply to an offsite building during the time the building is used wholly or in part for community college purposes if the building is neither owned by a community college district nor leased by a community college district under a lease containing an option to purchase that building. For the purposes of this section, an "offsite building" is a building which is situated on land which is neither owned by a community college district nor leased by a community college district under a lease containing an option to purchase the land.

(b) "School building" as used in this article means and includes any building used, or designed to be used, for community college purposes and constructed, reconstructed, altered, or added to, by the state or by any city or city and county, or by any political subdivision, or by any district of any kind within the state, or by any regional occupational center or program created by or authorized to act by an agreement under joint exercise of power, or by the United States government, or any agency thereof.

(c) Where the primary use of either a building or complex within which the building is situated, operated by an official or board of a city, city and county, or county, is for purposes other than educational, such as, but not limited to, correctional, forestry, or hospital purposes, the building shall not be considered to be a "school building" within the meaning of Section 81131, notwithstanding any educational use thereof incidental to the primary purpose.

(d) For the purposes of this article and Article 8 (commencing with Section 81160), "school building" does not include any of the following:

(1) Any building of a community college district which is used solely for classes or programs in outdoor science, conservation, and forestry and which does not occupy, in whole or in part, the same parcel of land upon which there is situated any school maintained by the district.

(2) Agricultural facilities that were not built for classroom purposes and which are used primarily for plant and animal production or the storage of materials, equipment, and supplies involved in that production.

(3) Animal kennels and facilities used to house animals as part of an animal health instruction program.

(e) "Construction or alteration" as used in this article includes any construction, reconstruction, or alteration of, or addition to, any school building.

SEC. 546. Section 81131 of the Education Code is repealed.

SEC. 547. Section 81131.5 of the Education Code is repealed.

SEC. 548. Section 81131.6 of the Education Code is repealed.

SEC. 549. Section 81132 of the Education Code is repealed.

SEC. 550. Section 81133 of the Education Code is amended to read:

81133. (a) The Department of General Services shall pass upon and approve or reject all plans for the construction or, if the estimated cost exceeds twenty thousand dollars ($20,000), the alteration of any school building. To enable it to do so, the governing board of each community college district and any other school authority before adopting any plans for the school building shall submit the plans to the Department of General Services for approval, and shall pay the fees prescribed in this article.

Where the estimated cost of an alteration exceeds ten thousand dollars ($10,000) but does not exceed twenty thousand dollars ($20,000), a structural engineer shall examine the proposed project to determine if it is a nonstructural alteration or a structural alteration. If he or she determines that the project is a nonstructural alteration, he or she shall prepare a statement so indicating. If he or she determines that the project is structural, he or she shall prepare plans and specifications for the project and shall observe the work of construction. A copy of the engineer's report stating that the work does not affect structural elements, or a copy of the plans and specifications for structural work, as the case may be, shall be filed with the Department of General Services.

(b) Before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Department of General Services, shall first be had and obtained.

(c) In each case the application for approval of the plans shall be accompanied by the plans and full, complete, and accurate specifications, and structural design computations, and estimates of cost, which shall comply in every respect with any and all requirements prescribed by the Department of General Services.

(d) The application shall be accompanied by a filing fee in amounts as determined by the Department of General Services based on the estimated cost according to the following schedule:

(1) For the first one million dollars ($1,000,000), a fee of not more than 0.7 percent of the estimated cost.

(2) For all costs in excess of one million dollars ($1,000,000), a fee of not more than 0.6 percent of the estimated cost.

The minimum fee in any case shall be two hundred fifty dollars ($250). If the actual cost exceeds the estimated cost by more than 5 percent, a further fee shall be paid to the Department of General Services, based on the above schedule and computed on the amount by which the actual cost exceeds the amount of the estimated cost.

(e) All fees shall be paid into the State Treasury and credited to the Division of Architecture Public Building Fund, which fund is continued in existence and is retitled the Architecture Public Building Fund, and are continuously appropriated, without regard to fiscal years, for the use of the Department of General Services,

subject to approval of the Department of Finance, in carrying out the provisions of this article.

Adjustments in the amounts of the fees, as determined by the Department of General Services and approved by the Department of Finance, shall be made within the limits set in subdivision (d) in order to maintain a reasonable working balance in the fund.

(f) No contract for the construction or alteration of any school building, made or executed by the governing board of any community college district or other public board, body, or officer otherwise vested with authority to make or execute this contract, is valid, and no public money shall be paid for any work done under this contract or for any labor or materials furnished in constructing or altering the building, unless the plans, specifications, and estimates comply in every particular with the provisions of this article and the requirements prescribed by the Department of General Services and unless the approval thereof in writing has first been had and obtained from the Department of General Services.

SEC. 551. Section 81134 of the Education Code is repealed.

SEC. 552. Section 81135 of the Education Code is repealed.

SEC. 553. Section 81136 of the Education Code is repealed.

SEC. 554. Section 81137 of the Education Code is repealed.

SEC. 555. Section 81140 of the Education Code is repealed.

SEC. 556. Section 81160 of the Education Code is amended to read:

81160. (a) The provisions of this article do not apply to an offsite building during the time the building is used wholly or in part for community college purposes if the building is neither owned by a community college district nor leased by a community college district under a lease containing an option to purchase the building. For the purposes of this section, an "offsite building" is a building which is situated on land which is neither owned by a community college district nor leased by a community college district under a lease containing an option to purchase the land.

(b) "School building" as used in this article excludes any building which is used for community college district administrative buildings located on a site separate from the community college campuses of the district, and into which students are not required to enter.

(c) "School building" as used in this article shall be limited to any physical structure capable of being occupied by pupils, but shall exclude, (1) any bleacher or grandstand with less than six rows of seats, (2) any building which is used exclusively for warehouse, storage, garage, or districtwide administrative office purposes, into which pupils are not required to enter, and off-campus buildings utilized by adult schools or community colleges for voluntary adult education courses or registered apprentice courses, (3) any swimming pool, or (4) any yard or lighting poles or flagpoles or playground equipment which does not exceed 35 feet in height.

If any building so excluded was not constructed in accordance with Article 7 (commencing with Section 81130) of this chapter and was

not repaired, reconstructed, or replaced in accordance with this article, there shall be posted in a conspicuous place on the building a public notice stating that the building does not meet the structural standards imposed by law for earthquake safety.

SEC. 557. Section 81164 of the Education Code is repealed.

SEC. 558. Section 81165 of the Education Code is repealed.

SEC. 559. Section 81176 of the Education Code is repealed.

SEC. 560. Section 81177 of the Education Code is amended to read:

81177. (a) No member of the governing board of a community college district shall be held personally liable for injury to persons or damage to property resulting from the fact that a school building was not constructed under the requirements of Article 7 (commencing with Section 81130), if the governing board complies with this article. The limit on liability shall commence when the governing board initiates action to comply with Section 81162.

A licensed structural engineer or licensed architect employed by a governing board to examine any school building under this article shall not be held personally liable for injury to persons or damage to property as a result of the structural inadequacy and failure of a building, provided he or she has exercised normal professional diligence in carrying out his or her functions under Article 7 (commencing with Section 81130) and this article.

(b) Except as provided in subdivision (a), nothing in this article shall be construed as relieving any member of the governing board of a community college district of any liability for injury to persons or damage to property imposed by law.

SEC. 561. Section 81179 of the Education Code is amended to read:

81179. Notwithstanding any other provision of this article or Chapter 4 (commencing with Section 81800), whenever a community college district does not have funds available to repair, reconstruct, or replace the school buildings referred to in this article or Section 16320, the community college district shall apply for the funds as may be necessary to accomplish the repair, reconstruction, or replacement pursuant to Chapter 4. The community college district shall also accept the funds as are disbursed to the district pursuant to Chapter 4, whether or not the funds constitute the maximum amount applied for, and shall repay the funds in accordance with Chapter 4.

SEC. 562. Section 81801 of the Education Code is repealed.

SEC. 563. Section 81802 of the Education Code is repealed.

SEC. 564. Section 81803 of the Education Code is repealed.

SEC. 565. Section 81804 of the Education Code is repealed.

SEC. 566. Section 81805 of the Education Code is amended to read:

81805. This chapter shall be administered by the Board of Governors of the California Community Colleges, and for purposes of the administration the board of governors shall adopt all necessary

rules and regulations.

For purposes of this chapter, the board of governors shall assemble statewide data on facility and construction costs, and on the basis thereof formulate cost standards and construction standards. The formulation of standards shall include also the formulation of average ratios of equipment cost to total project costs, unit equipment costs per faculty or other staff measure, and unit costs related to floor areas.

SEC. 567. Section 81806 of the Education Code is repealed.

SEC. 568. Section 81807 of the Education Code is amended to read:

81807. Funds appropriated for a project of a community college district for purposes of this chapter shall be allocated and disbursed upon order of the Board of Governors of the California Community Colleges, and by warrants of the Controller issued pursuant thereto.

SEC. 569. Section 81809 of the Education Code is repealed.

SEC. 570. Section 81810 of the Education Code is repealed.

SEC. 571. Section 81820 of the Education Code is amended to read:

81820. The governing board of each community college district shall prepare and submit to the Board of Governors of the California Community Colleges a plan for capital construction for community college purposes of the district. The plan shall reflect capital construction for community college purposes of the district for the five-year period commencing with the next proposed year of funding. The five-year plan shall be subject to continuing review by the governing board and annually shall be extended one year, and there shall be submitted to the board of governors, on or before the first day of February in each succeeding year, a report outlining the required modifications or changes, if any, in the five-year plan.

SEC. 572. Section 81821.5 of the Education Code is repealed.

SEC. 573. Section 81822 of the Education Code is amended to read:

81822. The board of governors shall review and evaluate the plan for capital construction submitted by the governing board of each community college district in terms of the elements of the capital construction program specified in Section 81821, and shall, on the basis of the review and evaluation, make the revision and changes therein as are appropriate, and notify the district. A similar review and evaluation of continuing five-year plans for capital construction submitted by the governing board of each community college district shall be made. The board of governors shall, promptly after review, notify the governing board of each community college district of the content of the district's revised plan for capital construction.

SEC. 574. Section 81830 of the Education Code is repealed.

SEC. 575. Section 81831 of the Education Code is repealed.

SEC. 576. Section 81833 of the Education Code is repealed.

SEC. 577. Section 81836 of the Education Code is amended to

read:

81836. The Board of Governors of the California Community Colleges shall:

(a) Advise the governing board of each community college district on the acquisition of new college sites, and after a review of available plots, give the governing board of the district in writing a list of the approved locations in the order of their merit, considering especially the matters of educational merit, reduction of traffic hazards, and conformity to the organized regional plans as presented in the master plan of the planning commission having jurisdiction, and charge the governing board of the community college district a reasonable fee as determined by the board of governors for each 10 acres or fraction thereof of schoolsite reviewed.

(b) Establish standards for community college facilities.

(c) Review plans and specifications for all construction in those community college districts that have submitted plans and specifications therefor to the board of governors for approval.

(d) For services rendered for the review of plans and specifications of a proposed project, the board of governors shall charge a reasonable fee as established by it.

(e) Approve plans and specifications submitted by governing boards of community college districts, and return without approval and with recommendation for changes, any plans not conforming to established standards.

SEC. 578. Section 81837 of the Education Code is amended to read:

81837. The governing board of each community college district, before letting any contract or contracts totaling one hundred fifty thousand dollars ($150,000), or more, in the erection of any new community college facility, or for any addition to, or alteration of, an existing community college facility, shall submit plans therefor to the Board of Governors of the California Community Colleges, and obtain the written approval of the plans by the board of governors. No contract for construction made by any governing board of a community college district contrary to this section is valid, nor shall any public money be paid for erecting, adding to, or altering any facility in contravention of this section.

SEC. 579. Section 81838 of the Education Code is repealed.

SEC. 581. Section 81900 of the Education Code is repealed.

SEC. 582. Section 81901 of the Education Code is amended to read:

81901. (a) The governing board of any community college district may issue revenue bonds pursuant to this chapter.

(b) The board, for the purpose of this chapter, has power and is hereby authorized, in addition to and amplification of all other powers conferred upon the board by the Constitution of the State of California or by any statute of the State of California:

(1) To acquire subject to the state law, by grant, purchase, gift, devise, or lease, or by the exercise of the right of eminent domain,

and to hold and use any real or personal property necessary or convenient or useful for the carrying on of any of its powers pursuant to this chapter.

(2) To construct, operate, and control any project.

(3) To fix rates, rents, or other charges for the use of any project acquired, constructed, equipped, furnished, operated, or maintained by the board, or for services rendered in connection therewith, and to alter, change, or modify the same at its pleasure, subject to any contractual obligation which may be entered into by the board with respect to the fixing of these rates, rents, or charges.

(4) To enter into covenants to increase rates or charges from time to time as may be necessary pursuant to any contract or agreement with the holders of any bonds of the board.

(5) At any time and from time to time, to issue revenue bonds in order to raise funds for the purpose of establishing any project, of acquiring lands for any project, of acquiring, constructing, improving, equipping, or furnishing any project, of refinancing any project, or for any combination of these purposes, which bonds may be secured as provided in this chapter.

(6) To exercise, subject to state law, the right of eminent domain for the condemnation of private property or any right or interest therein.

(7) To adopt the rules and regulations as may be necessary to enable the board to exercise the powers and to perform the duties conferred or imposed upon the board by this chapter.

(8) Nothing contained in this section or elsewhere in this chapter shall be construed directly or by implication to be in derogation of, or in limitation of, the powers conferred upon or existing in the board by virtue of provisions of the Constitution or statutes of this state.

(c) The board shall determine the time, form, and manner of the issuance of revenue bonds.

SEC. 583. Section 81903 of the Education Code is repealed.

SEC. 584. Section 81906 of the Education Code is repealed.

SEC. 585. Section 81908 of the Education Code is amended to read:

81908. (a) An indenture pursuant to which bonds are issued may include any and all covenants and agreements on the part of the board as the board deems necessary or advisable for the better security of the bonds issued thereunder. An indenture may include a clause, relating to the bonds issued thereunder, requiring the board to do any or all of the following:

(1) To pay or cause to be paid punctually the principal of all the bonds and the interest thereon on the date or dates, or at the place or places, and in the manner mentioned in the bonds and in the coupons appertaining thereto in accordance with the indenture.

(2) To operate the project continuously, to the extent practicable under conditions as they may from time to time exist, in an efficient and economical manner.

(3) To make all necessary repairs, renewals, and replacements to

any project, and to keep the project at all times in good repair, working order, and condition.

(4) To preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend these rights.

(5) To pay and discharge or cause to be paid and discharged all lawful claims for labor, materials, and supplies or other charges which, if unpaid, might become a lien or charge upon the revenues, or any part thereof, of any project acquired, constructed, or completed from the proceeds of the sale of the bonds, or upon any physical properties, or which might impair the security of the bonds.

(6) To fix, prescribe, and collect rates, rentals, or other charges in connection with the services and facilities furnished from the project acquired, constructed, or purchased from part or all of the proceeds of the bonds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with additional sums as may be required for any fund created by this chapter, for the further security of these bonds, or as a depreciation charge or other charge in connection with the project.

(7) To hold or cause to be held in trust the revenues or any part of the revenues pledged to the payment of the bonds and the interest thereon, or to any reserve or other fund created by this chapter for the further protection of the bonds, and to apply the revenues or any part of revenues or cause them to be applied only as provided in the indenture.

(b) An indenture may also include clauses which do any or all of the following:

(1) Limit, restrict, or prohibit any right, power, or privilege of the board to mortgage or otherwise encumber, sell, lease, or dispose of any improvements constructed from the proceeds of the bonds, or to enter into any lease or agreement which impairs or impedes the operation of a project, or any part thereof, necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to these revenues.

(2) Define the power of the board in applying the proceedings of the sale of any issue of bonds for the purpose of acquiring, constructing, or completing any project or any part thereof.

(3) Limit the power of the board to issue additional bonds for the purpose of acquiring, constructing, or completing any project or any part thereof.

(4) Require, specify, or limit the kind, amount, and character of insurance to be maintained by the board on any project, or any part thereof, and the use and disposition of the proceeds of any insurance thereafter collected.

(5) Provide the events of default and the terms and conditions upon which any or all of the bonds of the board then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which this declaration and its consequences may be waived.

(6) Designate the rights, limitations, powers, and duties arising

upon breach by the board of any of the covenants, conditions, or obligations contained in any indenture.

(7) Prescribe a procedure by which the terms and conditions of the indenture may be subsequently amended or modified with the consent of the board and the vote or written assent of the holders of a specified principal amount or specified proportion of the bonds issued and outstanding. The clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of an amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

With respect to any clause providing for the modification or amendment of an indenture, the board may agree that bonds held by the county treasurer, the United States or any instrumentality thereof, or the State of California or any political subdivision thereof (including every municipal corporation, district, public corporation, board, or agency of any kind or class) shall not be counted as outstanding bonds, or be entitled to vote or assent, but shall, nevertheless, be subject to modification or amendment.

(8) Provide for other acts and matters as may be necessary, convenient, or desirable in order to better secure the bonds or to make the bonds more marketable.

(c) The board may provide in an indenture for the carrying of liability or property or any other insurance in any amount or character it shall determine, and for the payment of the premiums thereon.

(d) The board may include in an indenture the limitations as to competitive projects, both as to location and comparative rentals, as may be deemed necessary or desirable for the security of revenue bonds issued pursuant to this chapter.

(e) The board may include in an indenture a covenant that no project acquired, constructed, or completed from the proceeds of revenue bonds issued under the provisions of this chapter shall be used without charge therefor or any facilities thereof be furnished free of charge to any person.

SEC. 586. Section 81910 of the Education Code is repealed.

SEC. 587. Section 81911 of the Education Code is repealed.

SEC. 588. Section 81912 of the Education Code is repealed.

SEC. 589. Section 81913 of the Education Code is repealed.

SEC. 590. Section 81914 of the Education Code is repealed.

SEC. 591. Section 81915 of the Education Code is repealed.

SEC. 592. Section 81916 of the Education Code is repealed.

SEC. 593. Section 81917 of the Education Code is repealed.

SEC. 594. Section 81918 of the Education Code is repealed.

SEC. 595. Section 81919 of the Education Code is repealed.

SEC. 596. Section 81920 of the Education Code is repealed.

SEC. 597. Section 81921 of the Education Code is repealed.

SEC. 598. Section 81922 of the Education Code is repealed.

SEC. 599. Section 81923 of the Education Code is repealed.

SEC. 600. Section 81924 of the Education Code is repealed.

SEC. 601. Section 81931 of the Education Code is repealed.

SEC. 602. Section 81947 of the Education Code is amended to read:

81947. Before issuing any bonds pursuant to this chapter, the board shall by resolution declare the purpose for which the proceeds of the bonds proposed to be issued shall be expended and shall specify the maximum amount of bonds to be issued or sold for that purpose. The bonds shall not be issued or sold for that purpose in an amount exceeding the specified maximum except with the consent of bondholders, pursuant to amendment or modification of an indenture, as provided in Section 81908. Nothing in this section shall be construed to prevent the board from amending any resolution prior to the issuance of bonds authorized thereby to increase or decrease the maximum amount of bonds to be issued or sold. The issuance of bonds for one or more projects may be included in a single resolution of authorization.

SEC. 603. Section 81948 of the Education Code is repealed.

SEC. 604. Section 81953 of the Education Code is repealed.

SEC. 605. Section 81954 of the Education Code is repealed.

SEC. 606. Section 81957 of the Education Code is repealed.

SEC. 607. Section 81958 of the Education Code is repealed.

SEC. 608. Section 81959 of the Education Code is repealed.

SEC. 609. Section 81967 of the Education Code is repealed.

SEC. 610. Section 82305 of the Education Code is repealed.

SEC. 611. Section 82305.5 of the Education Code is repealed.

SEC. 612. Section 82321 of the Education Code is amended to read:

82321. A schoolbus is any motor vehicle designed, used, or maintained for the transportation of any school pupil at or below the 12th-grade level to or from a public or private school or to or from public or private school activities.

The governing board of a district maintaining a community college may, by resolution, designate any motor vehicle operated by or for the district, a schoolbus within the meaning of this section, if it is primarily used for the transportation of community college students to or from a public community college or to or from public community college activities. The designation shall not be effective until written notification thereof has been filed with the Department of the California Highway Patrol.

SEC. 613. Section 82321.1 of the Education Code is repealed.

SEC. 614. Section 82360 of the Education Code is repealed.

SEC. 615. Section 82362 of the Education Code is repealed.

SEC. 616. Section 82363 of the Education Code is repealed.

SEC. 617. Section 82364 of the Education Code is repealed.

SEC. 617.3. Section 82365 of the Education Code is repealed.

SEC. 618. Article 1 (commencing with Section 82500) of Chapter 8 of Part 49 of the Education Code is repealed.

SEC. 619. Section 82530 of the Education Code is repealed.

SEC. 620. Section 82531 of the Education Code is repealed.

SEC. 621. Section 82532 of the Education Code is repealed.

SEC. 622. Section 82533 of the Education Code is repealed.

SEC. 623. Section 82535 of the Education Code is repealed.

SEC. 624. Section 82536 of the Education Code is repealed.

SEC. 625. Section 82537 of the Education Code is amended to read:

82537. (a) There is a civic center at each and every community college within the state where the citizens, Camp Fire Girls, Boy Scout troops, farmers' organizations, school-community advisory councils, senior citizens' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any subjects and questions which in their judgment appertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside. Governing boards of the community college districts may authorize the use, by citizens and organizations of any other properties under their control, for supervised recreational activities.

(b) The governing board of any community college district may grant the use of college facilities or grounds for public, literary, scientific, recreational, educational, or public agency meetings, or for the discussion of matters of general or public interest upon terms and conditions which the board deems proper, and subject to the limitations, requirements, and restrictions set forth in this article.

(c) No use shall be granted in a manner that constitutes a monopoly for the benefit of any person or organization.

(d) The use of any community college facility and grounds for any meeting is subject to reasonable rules and regulations as the governing board of the district prescribes, and shall not interfere with the use and occupancy of the community college facilities and grounds, as is required for the purposes of the community colleges of the state.

(e) The management, direction, and control of the civic center is vested in the governing board of the community college district.

(f) The governing board of the community college district shall make all needful rules and regulations for conducting the civic meetings and for such recreational activities as are provided for in this chapter and which aid, assist, and lend encouragement to the activities.

SEC. 626. Section 82538 of the Education Code is repealed.

SEC. 627. Section 82539 of the Education Code is repealed.

SEC. 628. Section 82540 of the Education Code is repealed.

SEC. 629. Section 82541 of the Education Code is repealed.

SEC. 630. Section 82542 of the Education Code is amended to read:

82542. (a) Except as provided in subdivision (b), the governing board of any community college district shall grant without charge the use of any college facilities or grounds under its control, pursuant to the requirements of this article, when an alternative location is not available, to nonprofit organizations and clubs and associations organized for general character building or welfare purposes, such as:

(1) Student clubs and organizations.

(2) Fundraising entertainments or meetings where admission fees charged or contributions solicited are expended for the welfare of the students of the district.

(3) Parent-teachers' associations.

(4) School-community advisory councils.

(5) Camp Fire Girls, Girl Scout troops, and Boy Scout troops.

(6) Senior citizens' organizations.

(7) Other public agencies.

(8) Organizations, clubs, or associations organized for cultural activities and general character building or welfare purposes (such as folk and square dancing).

(9) Groups organized for the purpose specified in subdivision (g).

(b) The governing board may charge those organizations and activities listed in subdivision (a) an amount not to exceed the following:

(1) The cost of opening and closing the facilities, if no college employees would otherwise be available to perform that function as a part of their normal duties.

(2) The cost of a college employee's presence during the organization's use of the facilities, if the governing board determines that the supervision is needed, and if that employee would not otherwise be present as part of his or her normal duties.

(3) The cost of janitorial services, if the services are necessary, and would not have otherwise been performed as part of the janitor's normal duties.

(4) The cost of utilities directly attributable to the organization's use of the facilities.

(c) The governing board may charge an amount not to exceed its direct costs or not to exceed fair rental value of college facilities and grounds under its control, and pursuant to the requirements of this article, for activities other than those specified in subdivision (a). Each governing board which decides to levy these charges shall first adopt a policy specifying which activities shall be charged an amount not to exceed direct costs and which activities shall be charged an amount not to exceed fair rental value.

(1) As used in this section, "direct costs" to the district for the use of college facilities or grounds means those costs of supplies, utilities, janitorial services, services of any other district employees, and salaries paid community college district employees necessitated by the organization's use of the college facilities and grounds of the district.

(2) As used in this section, "fair rental value" means the direct costs to the district, plus the amortized costs of the college facilities or grounds used for the duration of the activity authorized.

(d) The governing board of any college district which authorizes the use of college facilities or grounds for the purpose specified in subdivision (e) shall charge the church or religious denomination an amount at least equal to the fair rental value of the facilities or grounds.

(e) The governing board of any community college district may grant the use of college facilities or grounds to any church or religious organization for the conduct of religious services for temporary periods where the church or organization has no suitable meeting place for the conduct of these services upon the terms and conditions as the board deems proper, and subject to the limitations, requirements, and restrictions set forth in this article. The governing board shall charge the church or religious organization using the property for the conduct of religious services a fee as specified in subdivision (d).

(f) In the case of entertainments or meetings where admission fees are charged or contributions are solicited and the net receipts of the admission fees or contributions are not expended for the welfare of the students of the district or for charitable purposes, a charge shall be made for the use of the college facilities, property, and grounds, which charge shall not be less than the fair rental value for the use of the college facilities, property and grounds, as determined by the governing board of the district.

The governing board may, however, permit the use, without charge, by organizations, clubs, or associations organized for senior citizens and for cultural activities and general character-building or welfare purposes, when membership dues or contributions solely for the support of the organization, club, or association, or the advancement of its cultural, character-building or welfare work, are accepted.

(g) The governing board of a community college district may grant the use of college facilities, grounds, and equipment to public agencies, including the American Red Cross, for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare, and may cooperate with these agencies in furnishing and maintaining services deemed by the governing board to be necessary to meet the needs of the community.

SEC. 631. Section 82543 of the Education Code is repealed.

SEC. 631.5. Section 84001 is added to the Education Code, to read:

84001. It is the intent of the Legislature that the administration of the laws governing the financial support of the public school system in this state be conducted within the purview of the following principles and policies:

The system of public school support should be designed to strengthen and encourage local responsibility for control of public

education. Community college districts should be so organized that they can facilitate the provision of full educational opportunities for all who attend the public schools. Local control is best accomplished by the development of strong, vigorous, and properly organized local school administrative units. It is the state's responsibility to create or facilitate the creation of local districts of sufficient size to properly discharge local responsibilities and to spend the tax dollar effectively.

The system of public school support should assure that state, local, and other funds are adequate for the support of a realistic funding level. It is unrealistic and unfair to the less wealthy districts to provide for only a part of the financing necessary for an adequate educational program.

The system of public school support should permit and encourage community college districts to provide and support improved district organization and educational programs. The system of public school support should prohibit the introduction of undesirable organization and educational practices, and should discourage any such practices now in effect. Improvement of programs in particular districts is in the interests of the state as a whole as well as of the people in individual districts, since the excellence of the programs in some districts will tend to bring about program improvement in other districts.

The system of public school support should make provision for the apportionment of state funds to local districts on a strictly objective basis that can be computed as well by the local districts as by the state. The principle of local responsibility requires that the granting of discretionary powers to state officials over the distribution of state aid and the granting to these officials of the power to impose undue restriction on the use of funds and the conduct of educational programs at the local level be avoided.

The system of public school support should effect a partnership between the state, the county, and community college districts, with each participating equitably in accordance with its relative ability. The respective abilities should be combined to provide a financial plan between the state and the local agencies for public school support. Toward this support program, each county and district, through a uniform method, should contribute in accordance with its true financial ability.

The system of public school support should provide for essential educational opportunities for all who attend the public schools. Provision should be made in the financial plan for adequate financing of all educational services.

The broader based taxing power of the state should be utilized to raise the level of financial support in the properly organized but financially weak districts of the state, thus contributing greatly to the equalization of educational opportunity for the students residing therein. It should also be used to provide a minimum amount of guaranteed support to all districts, for this state assistance serves to develop among all districts a sense of responsibility to the entire

system of public education in the state.

SEC. 632. Section 84004 of the Education Code is repealed.

SEC. 633. Section 84005 of the Education Code is repealed.

SEC. 634. Section 84030 of the Education Code is amended to read:

84030. The accounting system including the uniform fund structure used to record the financial affairs of any community college district shall be in accordance with the definitions, instructions, and procedures published in the California Community Colleges Budget and Accounting Manual as approved by the board of governors and furnished by the board of governors. No accounting manual so approved shall expressly or by implication affect the content of any educational program or objective, except as otherwise specifically provided for by this code. The Legislature hereby finds that the content shall be best determined by those involved in the administration of educational programs, including community college district governing boards, local administrators, instructors, and students.

SEC. 635. Section 84031 of the Education Code is repealed.

SEC. 636. Section 84035 of the Education Code is repealed.

SEC. 637. Section 84040 of the Education Code is repealed.

SEC. 638. Section 84040 is added to the Education Code, to read:

84040. (a) It is the intent of the Legislature to encourage sound fiscal management practices among community college districts for the most efficient and effective use of public funds for the education of community college students by strengthening fiscal accountability at the district and state levels.

(b) The governing board of each community college district shall provide for an annual audit of all funds, books and accounts of the district in accordance with regulations of the board of governors. The audit shall be made by certified public accountants licensed by the State Board of Accountancy. In the event the governing board of a community college district fails to provide for an audit, the board of governors shall provide for such audit, and if the board of governors fails or is unable to make satisfactory arrangements for such an audit, the Department of Finance shall make arrangements for the audit. The cost of any audit described above shall be paid from district funds.

(c) The board of governors shall adopt criteria and standards for periodic assessment of the fiscal condition of community college districts, and these regulations regarding the review and improvement of district fiscal conditions as necessary to encourage sound fiscal management practices. In so doing:

(1) The governing board of a community college district, as required by regulations of the board of governors, shall periodically report information to the board of governors regarding the fiscal condition of the district.

(2) The board of governors, by regulation, shall develop standards for district maintenance of sound fiscal conditions. The regulations

shall authorize a board comprehensive management review of any community college district which, after assessing itself or being assessed in accordance with board criteria and standards, is shown to be experiencing fiscal difficulty. On the basis of the findings of the management review, the board of governors may recommend appropriate changes in a district's management practices.

(3) The board of governors, by regulation, shall develop appropriate procedures and actions for districts which fail to achieve fiscal stability or which fail to comply with the board of governors' recommendations. The procedures and remedies may include the appointment of a special trustee to manage the district. The board of governors shall be authorized to reduce or withhold apportionment to districts to pay for the cost of the special trustee, management review or other extraordinary costs resulting from the district's fiscal difficulties and to ensure the stabilization of the district's financial condition.

(4) The board of governors shall report to the chairs of the educational policy and fiscal committees of both houses of the Legislature, the Director of Finance, and the Governor any corrective action taken by the district and any action taken against the district pursuant to paragraph (3).

SEC. 639. Section 84040.3 of the Education Code is repealed.

SEC. 640. Section 84040.6 of the Education Code is amended to read:

84040.6. On June 30, 1991, and each year thereafter, the Board of Governors of the California Community Colleges shall report to the Joint Legislative Audit Committee on (1) the number and nature of audit exceptions and estimated amount of funds involved in the exceptions, (2) a list of districts which failed to file their audits pursuant to Section 84040, and (3) the actions taken by the department to eliminate audit exceptions and comply with management improvement recommendations.

SEC. 641. Section 84040.7 of the Education Code is repealed.

SEC. 642. Section 84041 of the Education Code is repealed.

SEC. 643. Section 84043 of the Education Code is repealed.

SEC. 644. Section 84044 of the Education Code is repealed.

SEC. 645. Section 84045 of the Education Code is repealed.

SEC. 646. Section 84046 of the Education Code is repealed.

SEC. 647. Article 3 (commencing with Section 84050) of Chapter 1 of Part 50 of the Education Code is repealed.

SEC. 648. Section 84200 of the Education Code is repealed.

SEC. 649. Section 84201 of the Education Code is repealed.

SEC. 650. Section 84206 of the Education Code is repealed.

SEC. 651. Section 84207 of the Education Code is amended to read:

84207. On or before November 15 of each year, the county auditor of each county shall furnish to the Board of Governors of the California Community Colleges the actual previous year's receipts, along with estimated current year receipts for secured tax receipts,

unsecured tax receipts, prior year tax receipts, timber tax receipts, and any other appropriate taxes or subventions for each community college district or portion of a district situated within his or her county. This information shall be forwarded on forms prescribed by the Board of Governors of the California Community Colleges.

SEC. 652. Section 84300 of the Education Code is repealed.

SEC. 653. Section 84320 of the Education Code is amended to read:

84320. The board of governors shall adopt regulations providing for the payment of apportionments to districts on a schedule to include an advance apportionment and a first and second principal apportionment. Unless and until the dates related to these apportionments are amended in consultation with the Department of Finance, the regulations shall provide for the following schedule of payments as provided in this section:

(a) The board of governors shall certify estimated apportionments to the Controller on or before July 15 of each year.

(b) The first principal apportionment shall be certified on or before February 20 of each year, at which time shall also be made any final apportionment and recalculation of prior years, as applicable.

(c) The second principal apportionment shall be certified on or before June 25 of each year.

SEC. 654. Section 84322 of the Education Code is repealed.

SEC. 655. Section 84324 of the Education Code is repealed.

SEC. 656. Section 84325 of the Education Code is repealed.

SEC. 657. Section 84327 of the Education Code is repealed.

SEC. 658. Section 84328 of the Education Code is amended to read:

84328. (a) The Board of Governors of the California Community Colleges shall certify each apportionment made by it to the Controller.

(b) The board of governors shall furnish an abstract of each apportionment of the State School Fund to the Controller, the Department of Finance, and to the county and city and county auditors, county and city and county treasurers, and to the county superintendents of schools of the several counties of the state.

SEC. 659. Section 84329 of the Education Code is repealed.

SEC. 660. Section 84330 of the Education Code is repealed.

SEC. 661. Section 84331 of the Education Code is repealed.

SEC. 662. Section 84332 of the Education Code is repealed.

SEC. 663. Section 84360 of the Education Code is repealed.

SEC. 665. Section 84362 of the Education Code is amended to read:

84362. (a) As used in this section, "salaries of classroom instructors" means:

(1) The salary paid to each instructor employed by the district whose duties require that the full time for which the instructor is employed be devoted to the instruction of students of the district.

(2) The portion of the salary of each instructor whose duties

require that a part, but not all, of the full time for which the instructor is employed be devoted to the instruction of students of the district, which is equal to the portion of the full time actually devoted by the instructor to teaching students of the district.

(3) The salary paid to each instructional aide employed by the district, any portion of whose duties are required to be performed under the supervision of an instructor. However, the cost of all health and welfare benefits provided to the instructors by the community college district shall be included within the meaning of "salaries of classroom instructors."

(b) (1) As used in this section an "instructor" means an employee of the district employed in a position requiring certification qualifications and whose duties require him or her to teach students of the district for at least one full instructional period each schoolday for which the employee is employed. An instructional period is the number of minutes equal to the number of minutes of the regular academic period in the community college in which the instructor is employed.

(2) As used in this section, "administrator" means any employee in a position having significant responsibilities for formulating district policies or administering district programs; and "supervisor" means any employee having authority, on behalf of the district, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, adjust their grievances, or effectively recommend that action, if the exercise of the authority is not of a merely routine or clerical nature.

(c) "Current expense of education" means the gross total expended (not reduced by estimated income or estimated federal and state apportionments) for the purposes classified in the final budget of a district (except one which, during the preceding fiscal year, had less than 101 units of average daily attendance) for certificated salaries other than certificated salaries for student transportation, food services, and community services; classified salaries other than classified salaries for student transportation, food services, and community services; employee benefits other than employee benefits for student transportation personnel, food services personnel, and community services personnel; books, supplies, and equipment replacement other than for student transportation and food services; and community services, contracted services, and other operating expenses other than for student transportation, food services, and community services. "Current expense of education," for purposes of this section, shall not include those expenditures classified as sites, buildings, books, and media and new equipment (object of expenditure 6000 of the Accounting Manual for California Community Colleges), the amount expended from categorical aid received from the federal or state government which funds were granted for expenditures in a program not incurring any instructor salary expenditures or requiring disbursement of the funds without regard to the

requirements of this section, or expenditures for facility acquisition and construction; and shall not include the amount expended pursuant to any lease agreement for plant and equipment or the amount expended from funds received from the federal government pursuant to the "Economic Opportunity Act of 1964" or any extension of that act of Congress or the amount expended by a community college from state or federal funds received by the community college for grants to community college students or for the employment of community college students.

(d) There shall be expended during each fiscal year for payment of salaries of classroom instructors by a community college district, 50 percent of the district's current expense of education.

(e) If the board of governors determines that a district has not expended the applicable percentage of current expense of education for the payment of salaries of classroom instructors during the preceding fiscal year, the board shall, in apportionments made to the district from the State School Fund after April 15 of the current fiscal year, designate an amount of the apportionment or apportionments equal to the apparent deficiency in district expenditures. Any amount so designated by the board of governors shall be deposited in the county treasury to the credit of the community college district, but shall be unavailable for expenditure by the district pending the determination to be made by the board of governors on any application for exemption which may be submitted to the board of governors. In the event it appears to the governing board of a community college district that the application of the preceding paragraphs of this section during a fiscal year results in serious hardship to the district, or in the payment of salaries of classroom instructors in excess of the salaries of classroom instructors paid by other districts of comparable type and functioning under comparable conditions, the governing board may apply to the board of governors in writing not later than September 15th of the immediately succeeding fiscal year for exemption from the requirements of this section.

(f) Immediately upon applying for the exemption described in subdivision (e), the governing board shall provide the exclusive representative of the district's certificated employees or, if none exists, the district or college academic senate, and all certificated employee organizations eligible for payroll dues deduction, with a copy of the application. The exclusive representative, or the district or college academic senate, and all certificated employee organizations eligible for payroll dues deduction, within 30 days of its receipt of the application, may transmit to the board of governors a written statement opposing the application, setting forth reasons for its opposition.

(g) Upon receipt of the application described in subdivision (f), duly approved, and of the statement of opposition, if any, the board of governors shall grant the district exemption for any amount that is less than one thousand dollars ($1,000). If the amount is one

thousand dollars ($1,000) or more, the board of governors may grant the district exemption from the requirement for the fiscal year for which the application is made if a majority of all the members of the board of governors finds, in writing, that the district will in fact suffer serious hardship or will have to pay salaries of classroom instructors in excess of those paid by other districts of comparable type and functioning under comparable conditions unless the district is granted an exemption. If the exemption is granted, the designated moneys shall be immediately available for expenditure by the community college district governing board. If no application for exemption is made or exemption is denied, the board of governors shall order the designated amount or amount not exempted to be added to the amounts to be expended for salaries of classroom instructors during the next fiscal year.

(h) The board of governors shall enforce the requirements prescribed by this section, and may adopt necessary rules and regulations to that end. It may require the submission during the school year, by community college district governing boards and county superintendents of schools, of the reports and information as may be necessary to carry out this section.

(i) The board of governors shall, no later than the 10th calendar day of each year of the Legislature, submit to the Legislature a written report on the operation, effect, and the extent of compliance with this section by community college districts in the state during the two most recently ended fiscal years. The report shall describe the activities of the board of governors, the chancellor's office, undertaken to ensure compliance with this section, and may contain recommendations for legislation pertaining to that subject.

SEC. 666. Section 84363 of the Education Code is repealed.

SEC. 667. Article 6 (commencing with Section 84370) of Chapter 3 of Part 50 of the Education Code is repealed.

SEC. 668. Section 84380 of the Education Code is repealed.

SEC. 669. Section 84381 of the Education Code is amended to read:

84381. (a) There is hereby created in the State Treasury the Community College Fund for Instructional Improvement. The fund shall consist of a revolving loan program and a direct grant program to support alternative educational programs and services within or on behalf of the California Community Colleges, including:

(1) Nontraditional forms, content, and methods of instruction, including, but not limited to, the following:

(A) Instructional programs which involve internships and experiential learning opportunities.

(B) Individualized instructional programs which require student development of learning objectives through learning contracts.

(C) Instructional programs which focus on the development of interpersonal skills.

(D) Instructional programs involving independent study.

(2) Programs for improving teaching abilities of faculty members.

(3) Programs addressing special learning needs of educationally disadvantaged students.

(4) Educational services for new clientele, including older, working adults.

(5) Efforts to improve traditional instructional programs.

(6) Programs for the improvement of the intellectual development of faculty and staff, including, but not limited to, the following:

(A) Intersegmental summer programs including research projects and seminars.

(B) College programs bringing visiting scholars to local districts.

(C) Interdisciplinary programs involving local noncollege institutions in the arts and sciences.

(D) Intersegmental research and public information projects on topics of special concern to rural and urban California regarding the environment, social history, and culture.

(E) Summer "bridge" programs for the transition period into college life.

(b) The board of governors shall adopt rules and regulations governing the administration of the direct grant program and revolving loan program.

(c) A district's request for and uses of a loan shall be made in accordance with rules and regulations adopted by the board of governors.

SEC. 670. Section 84382 of the Education Code is amended to read:

84382. The direct grant program shall support college efforts for instructional innovations and shall include financial participation by applicant colleges. The board of governors shall award grants to colleges on the basis of review of project proposals submitted by faculty members, students, and administrators. Priorities for funding proposals shall be established by the board of governors. Community college districts receiving awards under this article shall submit reports as required by the board of governors.

SEC. 671. Section 84383 of the Education Code is amended to read:

84383. A portion of the fund shall support evaluation of projects by the board of governors or by an independent evaluator. Not more than 5 percent of the fund may be used for administrative purposes by the board of governors in any fiscal year.

SEC. 672. Section 84384 of the Education Code is amended to read:

84384. The board of governors shall annually review the need for state funds to carry out the purposes of the fund for instructional improvement and shall include an estimate of this need in its budget for each year.

SEC. 673. Section 84384.1 of the Education Code is repealed.

SEC. 674. Section 84385 of the Education Code is repealed.

SEC. 675. Section 84386 of the Education Code is repealed.

SEC. 676. Section 84387 of the Education Code is repealed.

SEC. 677. Article 8 (commencing with Section 84390) of Chapter 3 of Part 50 of the Education Code is repealed.

SEC. 678. Chapter 4 (commencing with Section 84500) of Part 50 of the Education Code is repealed.

SEC. 679. Chapter 4 (commencing with Section 84500) is added to Part 50 of the Education Code, to read:

CHAPTER 4. ATTENDANCE

84500. Attendance shall be recorded and kept according to rules and regulations prescribed by the board of governors, subject to this chapter.

SEC. 681. Section 84660 of the Education Code is amended to read:

84660. (a) The Legislature finds and declares that it is in the interests of the people of the State of California to ensure that the facilities of the California Community Colleges are repaired and maintained on a timely basis in order to provide for the safe utilization of these facilities as well as providing for the prevention of further structural damage resulting in more costly repairs. The Legislature recognizes that in many community college districts high operating costs and limited district revenues have combined to restrict the ability of community college districts to provide for the periodic maintenance and timely repair of community college facilities.

It is the intent of the Legislature in enacting this chapter that funds be allocated pursuant to the requirements of this chapter to provide for the deferred maintenance and special repair of community college facilities. However, the Legislature recognizes that there may not be sufficient revenues in future years to provide an annual appropriation for the program provided by this chapter. Therefore, nothing in this chapter shall be construed to create an annual state obligation to fund this program.

(b) The Board of Governors of the California Community Colleges shall adopt rules and regulations for the allocation of funds authorized by this chapter for the deferred maintenance and special repair of community college facilities. The adopted rules and regulations shall establish criteria for the ranking of requests for funding by community college districts for funds allocated pursuant to this chapter. The adopted rules and regulations shall require districts to prepare and submit to the board of governors a five-year maintenance plan which includes plans for preventative as well as deferred maintenance in order to be eligible for state funding of deferred maintenance. The adopted rules and regulations shall require recipient districts to provide an amount of district funds equal to the amount of state funds to be allocated for facility deferred maintenance and special repair as a condition for the receipt of state funding, subject to a complete or partial waiver of this requirement

by the Board of Governors of the California Community Colleges based upon a review of the financial condition of the district.

For the purpose of this chapter, "deferred maintenance and special repair" means unusual, nonrecurring work to restore a facility to a safe and continually useable condition for which it was intended.

(c) No community college district shall receive funds pursuant to this chapter unless the district expends at least ½ percent of its current operating budget for ongoing maintenance.

(d) The board of governors may, pursuant to subdivision (b), increase the percentage specified in subdivision (c).

(e) It is the intent of the Legislature that funds received by districts pursuant to this chapter supplement, not supplant, district deferred maintenance funds.

SEC. 682. Section 84661 of the Education Code is repealed.

SEC. 683. Section 84662 of the Education Code is repealed.

SEC. 684. Section 84700.3 is added to the Education Code, to read:

84700.3. (a) The amount transferred to Section B of the State School Fund pursuant to law shall be expended for the state general apportionment, to be apportioned according to law.

(b) All moneys received by or for any community college under the jurisdiction of the Board of Governors of the California Community Colleges from any agency of the federal government, directly or indirectly, for the education of veterans, is hereby appropriated for the support of the community college in addition to other funds as may be appropriated therefor by the Legislature.

SEC. 685. Section 84735 of the Education Code is repealed.

SEC. 685.5. Article 5 (commencing with Section 84801) of Chapter 5 of Part 50 of the Education Code is repealed.

SEC. 687. Section 84850.5 of the Education Code is repealed.

SEC. 688. Section 84890 of the Education Code is amended to read:

84890. A community college district board may offer, subject to the approval of the Board of Governors of the California Community Colleges, and in accordance with rules and regulations to be adopted by the board of governors, courses under a flexible calendar.

SEC. 689. Section 84891 of the Education Code is repealed.

SEC. 690. Section 84892 of the Education Code is repealed.

SEC. 691. Section 84893 of the Education Code is repealed.

SEC. 692. Section 84894 of the Education Code is repealed.

SEC. 693. Section 84895 of the Education Code is repealed.

SEC. 694. Chapter 5.5 (commencing with Section 84900) of Part 50 of the Education Code is repealed.

SEC. 695. Chapter 6 (commencing with Section 85000) of Part 50 of the Education Code is repealed.

SEC. 696. Chapter 7 (commencing with Section 85100) of Part 50 of the Education Code is repealed.

SEC. 697. Article 1 (commencing with Section 85200) of Chapter

8 of Part 50 of the Education Code is repealed.

SEC. 698. Section 85210 of the Education Code is repealed.

SEC. 699. Section 85230 of the Education Code is amended to read:

85230. (a) Except as otherwise provided in this code, money shall be paid from the funds of any community college district for the payment of the expenses of the district, only as provided in this article.

(b) The Legislature reaffirms the status of the California Community Colleges as a segment of public higher education and the role of the Board of Governors of the California Community Colleges in providing general supervision over community college districts. The Legislature also reaffirms its grant of substantial fiscal autonomy to community college districts. It is the intent of the Legislature to provide for certain relationships between county offices and community college districts while confirming that governance authority over the community college districts rests with district governing boards and the board of governors.

SEC. 700. Section 85266.5 is added to the Education Code, to read:

85266.5. (a) With the approval of the Board of Governors of the California Community Colleges, the governing board of a community college district may cause to be drawn all warrants on the county treasurer against all the funds, except debt service, of the district in the county treasury in the payment of the expenses of the district. The warrants shall be issued by a person designated as the district auditor or district disbursing officer for the district on the county treasurer in favor of the persons entitled thereto in payment of all claims chargeable against the districts which have been legally examined, allowed, and ordered paid by the governing board. The district auditor shall issue warrants on the county treasurer for all debts and demands against the district when the amounts are fixed by law. The form of the warrant shall be as prescribed by the governing board and approved by the county auditor or county treasurer.

(b) Notwithstanding Section 85231, the cost of printing the warrants shall be borne by the district.

(c) No county officer shall be responsible for producing reports, statements, and other data relating to or based on these payments of the expenses of the districts. Those districts issuing warrants as provided by this section shall provide the county superintendent of schools, in the form prescribed by him or her, with the data necessary to make retirement reports and other reports required of him or her by law. All warrants, vouchers, and supporting documents shall be kept by the districts that draw their own warrants.

(d) Notwithstanding Section 27005 of the Government Code, or any other section requiring orders for warrants or warrants to be signed by the county superintendent of schools or the county auditor, or both, the county treasurer shall pay the warrant, if money is

available.

(e) Notwithstanding Section 84000, except for assessing and tax collecting, the county auditor and the county treasurer may charge those districts that draw their own warrants, and those districts shall pay, for the cost of all fiscal services.

(f) The person authorized by the governing board of the district to issue warrants pursuant to this section shall execute an official bond in an amount fixed by the governing board conditioned upon the faithful performance of his or her duties under this section. A county superintendent of schools or a county auditor shall not be liable under the terms of his or her bond or otherwise for any warrant issued pursuant to this section. It is not intended that this provision shall be applied so as to impair the obligation of any contract in the bond of the officer in effect on the effective date of this section.

(g) A listing of the warrants issued under this section by each district shall be forwarded to the county auditor, upon his or her request, and to the county superintendent of schools on the same day warrants are issued. The listing, which may be magnetic tape, punch cards, or in other form, shall report, among other things, the warrant number, date of the warrant, amount of the warrant, the name of the payee, and the fund on which drawn.

(h) The form and content of the warrant listing shall be as prescribed by the governing board and approved by the county auditor.

(i) Each district which issues warrants pursuant to this section shall furnish monthly to the county superintendent of schools and the county auditor of the county of jurisdiction, upon his or her request, a statement showing the current fiscal year to date, for each required expenditure classification, the amount budgeted, actual expenditures, encumbrances and unencumbered balances.

(j) In order to obtain the approval of the board of governors, a community college district shall file a written application with the county superintendent of schools. Upon receipt of an application from the district, the county superintendent of schools shall cause a survey to be made of the district's accounting controls by an independent certified public accountant or public accountant in accordance with standards prescribed by the board of governors. The certified public accountant or public accountant shall report his or her findings and recommendations to the county superintendent, county auditor, and to the applicant district.

(k) The county superintendent shall forward the district's application, together with his or her other recommendations and the recommendations of the county auditor and a report of the survey, to the board of governors for approval or disapproval of the application. The board of governors shall approve the application only if it finds that the accounting controls of the district are adequate. If the board of governors determines that these controls are inadequate, it shall disapprove the application.

(*l*) The county superintendent of schools shall be reimbursed for

all costs incident to the accounting controls survey made pursuant to the district's application, from the district's funds.

(m) When approved by the board of governors, the issuance of warrants pursuant to this section shall be effective at the beginning of the fiscal year if the approval had been made prior to the preceding first day in January. In the event that the issuance of warrant has been disapproved, the board of governors shall state the specific steps which must be taken by the district in order to receive approval. If at any time the county superintendent of schools determines that the accounting controls of the district have become inadequate, he or she may recommend to the board of governors that the approval be revoked, to be effective on the first day of the next following fiscal year.

SEC. 701. Article 1 (commencing with Section 85400) of Chapter 9 of Part 50 of the Education Code is repealed.

SEC. 702. Article 3 (commencing with Section 85420) of Chapter 9 of Part 50 of the Education Code is repealed.

SEC. 703. Section 85430 of the Education Code is repealed.

SEC. 704. Section 87448 is added to the Education Code, to read:

87448. (a) No physician, psychiatrist, oculist, dentist, dental hygienist, optometrist, otologist, podiatrist, audiologist, or nurse not employed in that capacity by the State Department of Public Health, shall be, nor shall any other person be, employed or permitted to supervise the health and physical development of students unless he or she holds a services credential with a specialization in health or a valid credential issued prior to November 27, 1970.

(b) Any psychologist employed pursuant to this section shall hold a school psychologist credential, a general pupil personnel services credential authorizing service as a school psychologist, a standard designated services credential with a specialization in pupil personnel services authorizing service as a psychologist, or a services credential issued by the board of governors or the Commission for Teacher Preparation and Licensing.

(c) The services credential with a specialization in health authorizing service as a school nurse shall not authorize teaching services unless the individual holds a baccalaureate degree, or its equivalent, and has completed a fifth year of preparation.

(d) No physician employed by a district to perform medical services pursuant to Section 87440 shall be required to hold a credential issued by the board of governors or the commission, provided he or she meets the requirements of Section 87440.

SEC. 705. Section 88020.5 is added to the Education Code, to read:

88020.5. The governing board of a community college district shall employ persons for food service positions as a part of the classified service.

SEC. 706. Section 16417 of the Government Code is amended to read:

16417. The auditor of any county receiving a payment of money

pursuant to this article shall immediately apportion the money by placing 50 percent to the credit of the road fund. The remaining 50 percent shall be divided between school and community college districts where the lands are located, with the division based on attendance. The portion attributable to school districts shall be placed to the credit of the county school service fund of the county. The portion attributable to community college districts shall be paid directly to the district.

SEC. 707. Section 20660 is added to the Public Contract Code, to read:

20660. Perishable food stuffs and seasonal commodities needed in the operation of cafeterias and food services may be purchased by a community college district in accordance with rules and regulations for the purchase adopted by the governing board of that district, notwithstanding any provisions of this code in conflict with the rules and regulations.

SEC. 708. (a) Prior to January 1, 1991, the Board of Governors of the California Community Colleges shall initially adopt and put into effect regulations which incorporate the text of the following Education Code provisions that have been repealed or amended by this act. The text of these sections, as they relate to community colleges, may be changed when initially adopted as regulations in accordance with the character of the California Community Colleges as a postsecondary education system, as specified in Section 70900 of the Education Code, and the responsibilities assigned to the Board of Governors of the California Community Colleges, as specified in the Education Code, including Sections 66700 and 70901. The changes shall not alter the requirements, rights, responsibilities, conditions or prescriptions contained in these statutes. Permitted initial changes include grammatical or technical changes, renumbering or reordering sections, removal of outdated terms or references to inapplicable or repealed statutory authorities, and the correction of gender references of the following sections of the Education Code:

Sections 8070, 8092, 17900, 17901, 17902, 17903, 18120, 18122, 71005, 71034, 72208, 72237, 72601, 72602, 72640, 72641, 72650, 74282, 74283, 76160, 76408, 78002, 78004, 78005, 78006, 78007, 78012, 78200.5, 78202, 78203, 78206, 78222, 78243, 78244, 78245, 78246, 78247, 78248, 78272, 78430, 78431, 78441, 78460, 78920, 79000, 79001, 81000, 81005, 81006, 81008, 81802, 81803, 81806, 81809, 81810, 81821.5, 81830, 81831, 81833, 81838, 82364, 84040.3, 84040.7, 84043, 84044, 84045, 84046, 84051, 84052, 84057, 84324, 84325, 84330, 84331, 84332, 84360, 84370, 84371, 84372, 84387, 84500, 84500.1, 84500.5, 84500.6, 84502, 84520, 84521, 84521.5, 84522, 84524.5, 84526, 84527, 84530, 84570, 84571, 84572, 84801, 84810, 84891, 84892, 84893, 84894, 84895, 85000, 85003, 85020, 85021, 85022, 85023, 85024, 85200, and 85210, and the second paragraph of Section 68090 of, the second sentence of Section 78205 of, the first sentence of Section 84041 of, and subdivision (b) of Section 84890. After initial adoption of the Board of Governors regulations specified by this

section, all subsequent changes to those regulations shall be made in accordance with Section 70901.5 of the Education Code.

(b) It is the intent of the Legislature that there be no lapse in the requirements, rights, responsibilities, conditions, or prescriptions contained in the statutes. Should the board of governors fail to adopt and put into effect regulations in accordance with subdivision (a), the listed statutes shall remain operative until the effective date of the corresponding board of governors regulations.

(c) After the text of Sections 78460, 84500, 84500.1, 84500.5, 84500.6, 84502, 84520, 84521, 84521.5, 84524.5, 84526, 84527, 84530, 84570, 84571, 84801, and 84895 of the Education Code have been initially adopted as regulations, any changes to these regulations, other than purely technical changes approved by the Department of Finance, shall not become effective until the implementation of Section 84750 of the Education Code in accordance with the provisions of subdivision (e) of Section 70 of Chapter 973 of the Statutes of 1988.

(d) The Legislature hereby finds and declares that all statutes which it has directed the Board of Governors of the California Community Colleges to adopt as regulations meet the standards of necessity, authority, clarity, consistency, reference, and nonduplication as provided in Section 70901.5 of the Education Code.

SEC. 709. Sections 13, 14, 18, 21, 27, 31, 50, 119, 120, 260, and 433 of this act shall become effective January 1, 1992.

SEC. 710. If the provisions of this bill amending Section 22200 of the Education Code and the provisions of AB 2642 amending Section 22200 of the Education Code are both chaptered on or before January 1, 1991, the provisions of AB 2642 amending Section 22200 shall prevail over the provisions of this bill amending that section.

SEC. 711. If the provisions of this bill amending Section 69511.5 of the Education Code and the provisions of AB 3397 amending Section 69511.5 of the Education Code are both chaptered on or before January 1, 1991, the provisions of AB 3397 amending Section 69511.5 of the Education Code shall prevail over the provisions of this bill amending that section.

SEC. 712. If the provisions of this bill amending Section 78213 of the Education Code and the provisions of AB 3707 amending Section 78213 of the Education Code are both chaptered on or before January 1, 1991, the provisions of AB 3707 amending Section 78213 of the Education Code shall prevail over the provisions of this bill amending that section.

SEC. 713. The Legislature recognizes that the review of the necessity of amending or repealing appropriate sections of the Education Code, as embodied in this act, reflects the best efforts of the board of governors to implement Section 57 of Chapter 973 of the Statutes of 1988 within the time constraints afforded. The Legislature also recognizes that additional review will permit greater input of interested parties, securing of appropriate expertise in those technical areas which were not addressed in this act, and further refinement of the governance structure identified in Chapter 973.

Accordingly, the Board of Governors of the California Community Colleges shall continue its review of the Education Code related to the administration and operation of the California Community Colleges and shall recommend to the Legislature the amendment or repeal of those provisions affected by Chapter 973 of the Statutes of 1988 which have not been accomplished in this act.

SEC. 714. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1373

An act to add Chapter 4 (commencing with Section 9990) to Division 3.6 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 9990) is added to Division 3.6 of the Vehicle Code, to read:

CHAPTER 4. DISCLOSURE OF DAMAGE

9990. For purposes of this chapter, damage sustained by a motor vehicle is material under any of the following circumstances:

(a) The damage required repairs having a value, including parts and labor calculated at the repairer's cost, exceeding 3 percent of the manufacturer's suggested retail price of the vehicle or five hundred dollars ($500), whichever is greater. The replacement of damaged or stolen components, excluding the cost of repainting or refinishing those components, if replaced by the installation of new original manufacturer's equipment, parts, or accessories that are bolted or otherwise attached as a unit to the vehicle, including, but not limited to, the hood, bumpers, fenders, mechanical parts, instrument panels, moldings, glass, tires, wheels, and electronic instruments, shall be excluded from the damage calculation, except that any damage having a cumulative repair or replacement value which exceeds 10

percent of the manufacturer's suggested retail price of the vehicle shall be deemed material.

(b) The damage was to the frame or drive train of the motor vehicle.

(c) The damage occurred in connection with a theft of the entire vehicle.

(d) The damage was to the suspension of the vehicle requiring repairs other than wheel balancing or alignment.

9991. Every dealer shall disclose in writing to the purchaser of a new or previously unregistered motor vehicle, prior to entering into a contract for the vehicle or, if unknown at that time, prior to delivery of the vehicle, any material damage known by the dealer to have been sustained by the vehicle and subsequently repaired.

9992. Every dealer shall disclose in writing to the purchaser of a new or previously unregistered motor vehicle, prior to entering into a contract for the vehicle or, if unknown at that time, prior to delivery of the vehicle, any damage, including, but not limited to, material damage, known by the dealer to have been sustained by the vehicle and not repaired.

9993. Nothing in this chapter permits any dealer to respond to the inquiry of a purchaser in any untrue or misleading manner.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1374

An act to amend Section 798.87 of, and to add Section 798.42 to, the Civil Code, relating to mobilehomes.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 798.42 is added to the Civil Code, to read:

798.42. (a) The management shall not charge or impose upon a homeowner any fee or increase in rent which reflects the cost to the management of any fine, forfeiture, penalty, or fee assessed by a court of law against the management for a violation of this chapter, including any attorney's fees and costs incurred by the management

in connection therewith.

(b) A court shall consider the remoteness in time of the assessment against the management of any fine, forfeiture, penalty, or fee in determining whether the homeowner has met the burden of proof that the fee or increase in rent is in violation of this section.

SEC. 2. Section 798.87 of the Civil Code is amended to read:

798.87. (a) The substantial failure of the management to provide and maintain physical improvements in the common facilities in good working order and condition shall be deemed a public nuisance. Notwithstanding Section 3491, such a nuisance may only be remedied by a civil action or abatement.

(b) The substantial violation of a mobilehome park rule shall be deemed a public nuisance. Notwithstanding Section 3491, such a nuisance may only be remedied by a civil action or abatement.

(c) A civil action pursuant to this section may be brought by a park resident, the park management, or in the name of the people of California by the district attorney or the city attorney of the jurisdiction in which the park is located.

CHAPTER 1375

An act to amend Sections 510, 12921.3, and 12921.4 of, and to add Section 12921.1 to, the Insurance Code, relating to insurance.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. In enacting this act, the Legislature finds and declares that the Department of Insurance should continue its consumer services efforts while focusing increased energies on bringing enforcement actions against those insurers who are found through the complaint handling process to be in violation of insurance laws and regulations, thereby discouraging future illegal practices by insurers. To help assure this result, the department should:

(a) Where necessary, develop sufficient procedures to investigate complaints and to pursue appropriate disciplinary action against an industry that the voters have asserted needs broader regulation and stricter scrutiny.

(b) Provide the public with easy access to the department.

(c) Provide the public information on individual insurers regarding complaints, disciplinary actions, and license status.

SEC. 2. Section 510 of the Insurance Code is amended to read:

510. Whenever a policy of insurance specified in Section 660 or 675, a policy of life insurance as defined in Section 101, a policy of disability insurance as defined in Section 106, or a certificate of

coverage as defined in Section 10270.6, is first issued to or delivered to a new insured or a new policyholder in this state, the insurer shall include a written disclosure containing the name, address, and toll-free telephone number of the unit within the Department of Insurance which deals with consumer affairs. The telephone number shall be the same as that provided to consumers under Section 12921.1. The disclosure shall be printed in large, boldface type.

The disclosure shall contain a statement that the Department of Insurance should be contacted only after the contacts between the complainant and the insurer or its agent or other representative have failed to produce a satisfactory solution to the problem.

SEC. 3. Section 12921.1 is added to the Insurance Code, to read:

12921.1. The commissioner shall establish a program on or before July 1, 1991, to investigate complaints and respond to inquiries received pursuant to Section 12921.3, to comply with Section 12921.4, and, when warranted, to bring enforcement actions against insurers. The program shall include, but not be limited to, the following:

(a) A toll-free number published in telephone books throughout the state, dedicated to the handling of complaints and inquiries.

(b) Public service announcements to inform consumers of the toll-free telephone number and how to register a complaint or make an inquiry to the department.

(c) A simple, standardized complaint form designed to assure that complaints will be properly registered and tracked.

(d) Retention of records on complaints for at least three years after the complaint has been closed.

(e) Guidelines to disseminate complaint and enforcement information on individual insurers to the public, which shall include, but not be limited to, the following:

(1) License status.

(2) Number and type of complaints closed within the last full calendar year, with analogous statistics from the prior two years for comparison. The proportion of those complaints determined by the department to require that corrective action be taken against the insurer, or leading to insurer compromise, or other remedy for the complainant, as compared to those which are found to be without merit. This information shall be disseminated in a fashion which will facilitate identification of meritless complaints and discourage their consideration by consumers and others interested in the records of insurers.

(3) Number and type of violations found.

(4) Number and type of enforcement actions taken.

(5) Ratio of complaints received to total policies in force, or premium dollars paid in a given line, or both.

(6) Any other information the department deems is appropriate public information regarding the complaint record of the insurer that will assist the public in selecting an insurer. However, nothing in this section shall be construed to permit disclosure of information or documents in the possession of the department to the extent that

the information and those documents are protected from disclosure under any other provision of law.

(f) Procedures and average processing times for each step of complaint mediation, investigation, and enforcement. These procedures shall be consistent with those in Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 of Division 1 for complaints within the purview of that article, consistent with those in Article 7 (commencing with Section 1858) of Chapter 9 of Part 2 of Division 1 for complaints within the purview of that article, and consistent with any other provisions of law requiring certain procedures to be followed by the department in investigating or prosecuting complaints against insurers.

(g) A list of criteria to determine which violations should be pursued through enforcement action, and enforcement guidelines that set forth appropriate penalties for violations based on the nature, severity, and frequency of the violations.

(h) Referral of complaints not within the department's jurisdiction to appropriate public and private agencies.

(i) Complaint handling goals that can be tested against surveys carried out pursuant to subdivision (a) of Section 12921.4.

(j) Inclusion in its annual report to the Governor, required by Section 12922, detailed information regarding the program required by this section, which shall include, but not be limited to: a description of the operation of the complaint handling process, listing civil, criminal, and administrative actions taken pursuant to complaints received; the percentage of the department's personnel years devoted to the handling and resolution of complaints; and suggestions for legislation to improve the complaint handling apparatus and to increase the amount of enforcement action undertaken by the department pursuant to complaints if further enforcement is deemed necessary to insure proper compliance by insurers with the law.

SEC. 4. Section 12921.3 of the Insurance Code is amended to read:

12921.3. The commissioner, in person or through employees of the department, shall receive complaints and inquiries, investigate complaints, prosecute insurers when appropriate and according to guidelines determined pursuant to subdivision (g) of Section 12921.1, and respond to complaints and inquiries by members of the public concerning the handling of insurance claims, including but not limited to, violations of Article 10 (commencing with Section 1861) of Chapter 9 of Part 2 of Division 1, by insurers, or alleged misconduct by insurers or production agencies.

The commissioner, as he or she deems appropriate, and pursuant to Section 12921.1, shall provide for the education of, and dissemination of information to, members of the general public or licensees of the department concerning insurance matters.

SEC. 5. Section 12921.4 of the Insurance Code is amended to read:

12921.4. (a) The commissioner shall, upon receipt of a written complaint with respect to the handling of an insurance claim or other obligation under the policy by an insurer or production agency, or alleged misconduct by an insurer or production agency, notify the complainant of the receipt of the complaint within 10 working days of receipt. Thereafter, the commissioner shall notify the complainant of the final action taken on his or her complaint.

The department shall include, with each notification of final action, or, at a minimum, with a number of randomly selected notifications of final action sufficient to assure the validity of results, a complaint handling evaluation form. This form shall clearly and concisely seek an evaluation of the department's performance in handling the complainant's grievance. The areas of evaluation shall include, but not be limited to: whether the complaint was handled in a fair and reasonable manner, evaluated thoroughly and without bias; the time required for resolution of the complaint; whether the complaint was referred and, if so, whether it was referred within a satisfactory time; whether the staff involved in handling the complaint demonstrated an adequate knowledge of the issues involved in the complaint; whether the complainant was satisfied with the result of the department's intervention; and whether the complainant would recommend the department's complaint handling services to others.

The commissioner shall, if deemed appropriate, notify insurers or production agencies against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant and may meet and confer with the complainant and the insurer in order to mediate the complaint. This section shall not be construed to give the commissioner power to adjudicate claims.

(b) The commissioner shall ascertain patterns of complaints by insurer, geographic area, insurance line, type of violation, and any other valid basis the commissioner may deem appropriate for further investigation, and periodically evaluate the complaint patterns to determine what additional audit, investigative, or enforcement actions which may be taken by the commissioner and report on all actions taken with respect to those patterns of complaints in his or her annual report to the Governor pursuant to Section 12922, and to the public. For the purposes of this subdivision, complaints mean those written complaints received by the commissioner under subdivision (a) and written complaints received by the commissioner from any other sources alleging misconduct or unlawful acts by insurers or production agencies.

SEC. 6. It is the intent of the Legislature that for purposes of this act, the word "prosecute" shall not be deemed to expand the Insurance Commissioner's existing authority to bring enforcement actions against insurers.

CHAPTER 1376

An act to add Sections 304.1, 304.2, 304.3, 304.6, 304.7, and 304.8 to, and to repeal Sections 305, 306, and 307 of, the Health and Safety Code, relating to maternal and child health.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 304.1 is added to the Health and Safety Code, to read:

304.1. A licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery shall obtain or cause to be obtained a blood specimen of the woman. Prior to obtaining the blood specimen, the woman shall be notified of the fact that the blood specimen is going to be obtained. If the blood specimen is not obtained prior to delivery, it shall be obtained at the time of delivery.

SEC. 2. Section 304.2 is added to the Health and Safety Code, to read:

304.2. (a) A blood specimen obtained pursuant to Section 304.1 shall be submitted to a clinical laboratory licensed by the state department or to an approved public health laboratory for a determination of rhesus (Rh) blood type and the results shall be reported to both of the following:

(1) The physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of delivery.

(2) The woman tested.

(b) In addition, a blood specimen obtained pursuant to Section 304.1 shall be submitted to a clinical laboratory licensed by the state department or to an approved public health laboratory for a test to determine the presence of hepatitis B surface antigen. In the event that other tests to determine hepatitis B infection become available, the state department may approve additional tests.

SEC. 3. Section 304.3 is added to the Health and Safety Code, to read:

304.3. (a) Subdivision (a) of Section 304.2 shall not be applicable if the licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery has knowledge of the woman's blood type and accepts responsibility for the accuracy of the information.

(b) Subdivision (b) of Section 304.2 shall not be applicable if the licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery has knowledge that the woman has previously been determined to be chronically infected with hepatitis (B) and accepts

responsibility for the accuracy of the information.

SEC. 4. Section 304.6 is added to the Health and Safety Code, to read:

304.6. The state department may adopt rules and regulations as it determines are reasonably necessary for the implementation of this article.

SEC. 5. Section 304.7 is added to the Health and Safety Code, to read:

304.7. (a) Clinical laboratories licensed by the state department, approved public health laboratories, local health departments, physicians and surgeons, or other persons engaged in the prenatal care of a pregnant woman or in the care of an infant shall maintain and make available to the state department information necessary to evaluate, for public health purposes, the effectiveness of testing and followup treatment for the prevention of perinatally transmitted hepatitis B infection.

(b) The state department shall make available, to the extent state funds are appropriated therefor in the annual Budget Act or federal funds are available for that purpose, money to each county requesting funds for testing and followup treatment for the prevention of perinatally transmitted hepatitis B infection or for any functions performed pursuant to subdivision (a). The money shall be allocated by the state department on the basis of the incidence of perinatally transmitted hepatitis B infection and the need for necessary followup treatment and evaluation in the requesting county.

SEC. 6. Section 304.8 is added to the Health and Safety Code, to read:

304.8. (a) The blood specimen and test results pursuant to subdivision (b) of Section 304.2 shall be confidential and shall not be disclosed, except as otherwise provided by law.

(b) No person shall be compelled in any state, county, city, or other local civil, criminal, administrative, legislative, or other proceeding to provide test results determined pursuant to Section 304.1 and Section 304.2.

SEC. 7. Section 305 of the Health and Safety Code is repealed.

SEC. 8. Section 306 of the Health and Safety Code is repealed.

SEC. 9. Section 307 of the Health and Safety Code is repealed.

CHAPTER 1377

An act to amend Sections 50811 and 50813 of, to add Section 50818 to, and to amend and renumber the heading of Chapter 11.5 (commencing with Section 50810) of Part 2 of Division 31 of, the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 11.5 (commencing with Section 50810) of Part 2 of Division 31 of the Health and Safety Code is amended and renumbered to read:

CHAPTER 11.6. TRANSITIONAL HOUSING RENTAL DEPOSIT GUARANTEE DEMONSTRATION PROGRAM

SEC. 2. Section 50811 of the Health and Safety Code is amended to read:

50811. The Director of Housing and Community Development shall establish the Transitional Housing Rental Deposit Guarantee Demonstration Program within the program established under Chapter 11 (commencing with Section 50800). Under the demonstration program, the department shall provide grants and technical assistance only to local nonprofit agencies or local governments operating emergency housing shelters or providing services relating to emergency housing needs of homeless individuals or families, to enable them to provide contractual guarantees for the payment of residential rental security deposits pursuant to this chapter. In order to be eligible for a grant under this chapter, the recipient shall match 15 percent of the dollar amount of the grant from private donations.

SEC. 3. Section 50813 of the Health and Safety Code is amended to read:

50813. Prospective tenants who are eligible to participate in a deposit guarantee contract shall be limited to homeless persons who are residing in an emergency housing shelter operated by a nonprofit organization or local governmental agency and who have a source of income sufficient to pay a monthly rental payment, but do not have the funds necessary for the payment of a security deposit. First priority for funds shall be families with minor children. Homeless persons and families who are temporarily residing in a park, car, or structure not designed for human habitation, or who are temporarily residing with another household in overcrowded conditions, or who are otherwise without shelter are also eligible.

Prior to entering into a contract with a prospective tenant under

Section 50814, the local agency shall make a determination of the eligibility of the household to participate in the program and a determination that an appropriate rental unit is available for occupation. A determination of eligibility shall include a verification of income and a determination that the head of the household is actually homeless.

SEC. 4. Section 50818 is added to the Health and Safety Code, to read:

50818. The Transitional Housing Rental Deposit Guarantee Demonstration Program established in this chapter (commencing with Section 50810) shall remain in effect only until July 1, 1993, and, as of that date, is repealed unless a later enacted statute, which is chaptered on or before July 1, 1993, deletes or extends that date.

CHAPTER 1378

An act to add Section 16501.6 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 16501.6 is added to the Welfare and Institutions Code, to read:

16501.6. (a) It is the intent of the Legislature for the State Department of Social Services to enhance the Child Welfare Services Case Management System to include information concerning the level of care required, educational accomplishments, and health history of children placed in foster care. If appropriate, this enhancement could be made after the system is operational statewide as required in Section 16501.5.

(b) The department shall conduct a study to examine the most efficient methods of collecting and maintaining all of the following data for each child in foster care:

(1) The names and addresses of the child's health and educational providers.

(2) The child's grade level performance.

(3) The child's school record.

(4) Assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement.

(5) A record of the child's immunizations.

(6) The child's known medical problems.

(7) The child's medications.

(8) Any other relevant level of care, health and education information concerning the child as determined appropriate by the

department.

(b) In conducting its study, the department shall, as required, examine county health passport systems for possible replication on a statewide basis and consult with other state departments, county associations, and provider groups.

(d) By February 15, 1992, the department shall submit a report to the appropriate policy and fiscal committees of the Legislature on the results of its study. The department shall include the following in its report:

(1) Recommendations for coordinating data collection among local child health and disability prevention programs, other health care providers, county welfare departments, schools, and other agencies providing services for foster children.

(2) Recommendations for the interfacing with any alternative system recommended pursuant to paragraph (1) with the mental health assessment required by Section 5407, and with other requirements of law.

(e) The report required by subdivision (d) shall address the feasibility, timeframe, and estimated costs of doing either of the following:

(1) Incorporating the data specified in subdivision (b) in the Child Welfare Services Case Management System.

(2) Implementing an alternative system which is more appropriate for the collection and maintenance of the data specified in subdivision (b).

CHAPTER 1379

An act to amend Section 1174 of, and to add Sections 1174.5 and 1205 to, the Labor Code, relating to labor.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1174 of the Labor Code is amended to read:

1174. Every person employing labor in this state shall:

(a) Furnish to the commission, at its request, reports or information which the commission requires to carry out this chapter. The reports and information shall be verified if required by the commission or any member thereof.

(b) Allow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation which they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports,

contracts, payrolls, documents, or papers of the person.

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by, and the wages paid to, employees employed at the respective plants or establishments, and which shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

SEC. 2. Section 1174.5 is added to the Labor Code, to read:

1174.5. (a) Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 , or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500).

SEC. 3. Section 1205 is added to the Labor Code, to read:

1205. Nothing in this part shall be deemed to restrict the exercise of local police powers in a more stringent manner.

CHAPTER 1380

An act to add Article 9.5 (commencing with Section 11773) to Chapter 7 of Division 3 of Title 2 of the Government Code, relating to electronic data processing.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares:

(a) State government is becoming increasingly dependent upon computer technology in the performance of public business and the storage of vital information.

(b) The operation of state government could be seriously impaired by disasters, natural or manmade, impacting state government computer operations.

(c) State government must assume that disasters will at some point strike all or part of its computer operations.

(d) Proper planning for disaster recovery with respect to government operations could help to ensure the maintenance and prompt resumption of vital public services.

(e) There is a need in state government for a more substantial and formalized process of disaster recovery planning in regards to government operations which are dependent upon automation.

SEC. 2. Article 9.5 (commencing with Section 11773) is added to Chapter 7 of Division 3 of Title 2 of the Government Code, to read:

Article 9.5. Disaster Recovery Planning

11773. Each state agency shall develop by July 1, 1991, a Disaster Recovery Plan with respect to information technology. Each agency shall establish a Disaster Recovery Planning Team to develop the Disaster Recovery Plan and to administer the plan's implementation. In developing the plan, the Disaster Recovery Planning Team shall do all of the following:

(a) Consider the organizational, managerial, and technical environments in which the Disaster Recovery Plan must be implemented.

(b) Assess the types and likely parameters of disasters most likely to occur and the resultant impacts on the agency's ability to perform its mission.

(c) List protective measures to be implemented in anticipation of a disaster, natural or manmade. Protective measures listed shall be:

(1) Those protective measures determined to be most cost effective; and

(2) Identified through the risk management process for information technology referred to in the State Administrative Manual.

11774. Each state agency shall file a copy of its Disaster Recovery Plan with the Office of Information Technology by January 31 of each year. The Office of Information Technology shall assist, review, and coordinate disaster planning with respect to information technology for all state agencies. If a state agency employs the services of a state data center, the agency must also provide the data center with a copy of its Disaster Recovery Plan.

11775. For purposes of this article, "disaster recovery planning" includes, but is not limited to, the documentation, plans, policies, and procedures that are required to restore normal operation to a state agency impacted by manmade or natural disaster.

CHAPTER 1381

An act to amend Section 14132.76 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Current low levels of reimbursement under the Medi-Cal program inhibit access to durable and home medical equipment by Medi-Cal beneficiaries.

(b) The provision of durable and home health equipment to patients in their homes and nonacute facilities is an extremely cost-effective alternative to hospitalization, resulting in savings to the Medi-Cal program.

(c) Advances in medicine and in equipment design and changes in hospital reimbursement have allowed a greater number of patients to recuperate or convalesce in the home setting. The current level of Medi-Cal reimbursement for durable medical equipment is not reflective of these changes.

SEC. 2. Section 14132.76 of the Welfare and Institutions Code is amended to read:

14132.76. (a) (1) Notwithstanding any other provision of this chapter, the department shall establish a pilot demonstration program under which no treatment authorization requests shall be required for the provision of prosthetic devices, including replacement or repair of these devices, which do not exceed five hundred dollars ($500), and of orthotic devices which do not exceed two hundred fifty dollars ($250).

(2) The purpose of the pilot demonstration program shall be the determination of cost savings to the Medi-Cal program.

(b) (1) The department shall review the effectiveness of the pilot demonstration program implemented pursuant to subdivision (a) and report its conclusions to the appropriate committees of the Legislature by December 31, 1992.

(2) The review and report required by paragraph (1) shall also address the potential effectiveness of eliminating the use of treatment authorizations in the containment of Medi-Cal costs.

(c) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 3. The State Department of Health Services shall promulgate regulations to require prior authorization for the repair costs of durable medical equipment covered under the Medi-Cal program only when the cost to the department exceeds an amount determined by the department, but no less than two hundred fifty dollars ($250).

CHAPTER 1382

An act to amend Section 3059 of the Business and Professions Code, relating to optometry.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 3059 of the Business and Professions Code is amended to read:

3059. (a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations which require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

CHAPTER 1383

An act to add Sections 20570.1 and 31202 to the Government Code, relating to public retirement.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 20570.1 is added to the Government Code, to read:

20570.1. Notwithstanding any other provision of this article, the board may enter into an agreement in accordance with Section 20570

with the governing body of a contracting agency, and the governing body of a city maintaining its own retirement system for termination of the contracting agency's participation in this system with respect to local firefighters and inclusion of those local firefighters in that city retirement system if the firefighting function of the contracting agency and the local firefighters have been transferred to that city. The contract shall continue with respect to all employees of the contracting agency other than local firefighters.

SEC. 2. Section 31202 is added to the Government Code, to read:

31202. Any firefighter who has become an employee of the first public agency because of the assumption by that public agency of the firefighting function of the second public agency who, at any time after becoming an employee of the first public agency, pays into the retirement fund of that first public agency the same amount which he or she would have contributed had he or she been employed by the first public agency at the same salary, and for the same time or periods of time for which and during which he or she was employed by the second public agency whose firefighting function is assumed by the first public agency shall have all of the retirement rights which he or she would have had, if any, had he or she been an employee of the first public agency at that salary and for the time or periods of time, unless the first public agency has provided by ordinance pursuant to Section 45310.5 for a modification of his or her rights and benefits because of membership in a reciprocal retirement system.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1384

An act to amend Sections 6425 and 6432 of the Labor Code, relating to occupational safety.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 6425 of the Labor Code is amended to read:

6425. Every employer, and every employee having direction, management, control, or custody of any employment, place of employment, or other employee, who willfully violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and that violation caused death to any employee, or caused permanent or prolonged impairment of the body of any employee, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of that person, punishment shall be by a fine not to exceed twenty thousand dollars ($20,000), by imprisonment for not more than one year, or by both. Nothing in this section shall prohibit a prosecution under Section 192 of the Penal Code.

SEC. 2. Section 6432 of the Labor Code is amended to read:

6432. (a) As used in this part, a "serious violation" shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a serious exposure exceeding an established permissible exposure limit or a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in the place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(b) As used in this section, "substantial probability" refers not to the probability that an accident or exposure will occur as a result of the violation, but rather to the probability that death or serious physical harm will result assuming an accident or exposure occurs as a result of the violation.

CHAPTER 1385

An act to amend Sections 1325, 1327, and 1329 of the Health and Safety Code, relating to health services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1325 of the Health and Safety Code is amended to read:

1325. The Legislature finds and declares that the transfer trauma which accompanies the abrupt and involuntary transfer of patients from one nursing home to another should be avoided when reasonable alternatives exist.

It is the intent of the Legislature in enacting this article to provide an alternative by establishing a system whereby the State Department of Health Services may apply for a court order appointing a receiver to temporarily operate a long-term health care facility. The receivership is not intended to punish a licensee or to replace attempts to secure cooperative action to protect the patients' health and security. The receivership is intended to protect the patients in the absence of other reasonably available alternatives.

The receiver may be appointed when a long-term health care facility is found to be in such condition that continued operation by the licensee, or his or her representative, presents a substantial probability or imminent danger of serious physical harm or death to the patients.

The receiver shall assume the operation of such a facility in order to either bring it into compliance with law and return it to the original licensee in accordance with standards set forth in this article, or facilitate a transfer of ownership to a new licensee. The receiver shall assure the orderly transfer of patients should the facility ultimately close.

SEC. 2. Section 1327 of the Health and Safety Code is amended to read:

1327. (a) Whenever circumstances exist indicating that continued management of a long-term health care facility by the current licensee would present a substantial probability or imminent danger of serious physical harm or death to the patients, or there exists in the facility a condition in substantial violation of this chapter or the rules and regulations adopted pursuant to this chapter, or the facility exhibits a pattern or practice of habitual violation of this chapter or the rules and regulations adopted pursuant thereto, or the facility is closing or intends to terminate operation as a licensed long-term health care facility and adequate arrangements for relocation of residents have not been made at least 30 days prior to

the closing or termination, the director may petition the superior court for the county in which the long-term health care facility is located for an order appointing a receiver to temporarily operate the long-term health care facility in accordance with this article.

The petition shall allege the facts upon which the action is based and shall be supported by an affidavit of the director. A copy of the petition and affidavits, together with an order to appear and show cause why temporary authority to operate the long-term health care facility should not be vested in a receiver pursuant to this article, shall be delivered to the licensee, administrator, or a responsible person at the facility to the attention of the licensee and administrator. The order shall specify a hearing date, which shall be not less than five, nor more than 10, days following delivery of the petition and order upon the licensee, except that the court may shorten or lengthen the time upon a showing of just cause.

(b) If the director files a petition pursuant to subdivision (a) for appointment of a receiver to operate a long-term health care facility, in accordance with Section 564 of the Code of Civil Procedure, the director may also petition the court, in accordance with Section 527 of the Code of Civil Procedure, for an order appointing a temporary receiver. A temporary receiver appointed by the court pursuant to this subdivision shall serve until the court has made a final determination on the petition for appointment of a receiver filed pursuant to subdivision (a). A receiver appointed pursuant to this subdivision shall have the same powers and duties as a receiver would have if appointed pursuant to subdivision (a).

At the time of the hearing, the state department shall advise the licensee of the name of the proposed receiver. The receiver shall be a licensed nursing home administrator or other responsible person or entity, as determined by the court, from a list of qualified receivers established by the state department, with input from providers of long-term care and consumer representatives. The department shall consult with the Board of Examiners of Nursing Home Administrators, in order to screen potential receivers who are licensed by the board, and to determine if they are administrators in good standing. Persons appearing on the list shall have experience in the delivery of health care services, and, if feasible, shall have experience with the operation of a long-term health care facility. The receivers shall have sufficient background and experience in management and finances to ensure compliance with orders issued by the court. The owner, licensee, or administrator shall not be appointed as the receiver unless authorized by the court.

If at the conclusion of the hearing, which may include oral testimony and cross-examination at the option of any party, the court determines that adequate grounds exist for the appointment of a receiver and that there is no other reasonably available remedy to protect the patients, the court may issue an order appointing a receiver to temporarily operate the long-term health care facility and enjoining the licensee from interfering with the receiver in the

conduct of his or her duties. The court shall in any such proceedings make written findings of fact and conclusions of law, and shall require an appropriate bond to be filed by the receiver and paid for by the licensee. The bond shall be in an amount necessary to protect the licensee in the event of any failure on the part of the receiver to act in a reasonable manner. The bond requirement may be waived by the licensee.

The court may permit the licensee to participate in the continued operation of the facility during the pendency of any receivership ordered pursuant to this section and shall issue an order detailing the nature and scope of participation.

Failure of the licensee to appear at the hearing on the petition shall constitute an admission of all factual allegations contained in the petition for purposes of these proceedings only.

The licensee shall receive notice and a copy of the application each time the receiver applies to the court or the state department for instructions regarding his or her duties under the provisions of this article, when an accounting pursuant to Section 1330 is submitted, and when a report pursuant to Section 1332 or other report is submitted. The licensee shall have an opportunity to present objections or otherwise participate in any such proceeding.

(c) (1) The director may petition the superior court pursuant to this section for the county in which any health facility, as defined in subdivision (e), (g), or (h) of Section 1250, providing long-term care for persons with developmental disabilities is located, for an order appointing a temporary receiver to operate the facility for a maximum of 120 days in accordance with this article.

(2) The state department may provide onsite technical assistance to the receiver appointed pursuant to this subdivision, if requested by the receiver, to continue operation of the facility. The technical assistance may include, but need not be limited to, technical assistance regarding any of the following:

(A) Staff training and personnel management.

(B) Rate adjustment applications and appeals.

(C) Administrative practices and procedures.

(D) Fiscal management.

(E) Licensing regulations and review procedures.

(3) The state department shall notify the State Department of Developmental Services and the appropriate regional center, or centers, of the receivership action.

(4) When the director has determined that the facility specified in paragraph (1) presents a risk of abruptly closing, but the director determines that the situation does not require the filing of a petition with the court for an order appointing a receiver, the director may provide onsite technical assistance as specified in paragraph (2) to the operator of the facility if the operator requests the assistance.

SEC. 3. Section 1329 of the Health and Safety Code is amended to read:

1329. (a) When a receiver is appointed, the licensee may, at the

discretion of the court, be divested of possession and control of the facility in favor of the receiver. The receiver appointed pursuant to this article:

(1) May exercise those powers and shall perform those duties ordered by the court, in addition to other duties provided by statute.

(2) Shall operate the facility in a manner which assures safety and adequate health care for the residents.

(3) Shall have the same rights to possession of the building in which the facility is located, and of all goods and fixtures in the building at the time the petition for receivership is filed, as the licensee and administrator would have had if the receiver had not been appointed.

(4) May use the funds, building, fixtures, furnishings, and any accompanying consumable goods in the provision of care and services to residents and to any other persons receiving services from the facility at the time the petition for receivership was filed.

(5) Shall take title to all revenue coming to the facility in the name of the receiver who shall use it for the following purposes in descending order of priority:

(A) To pay wages to staff. The receiver shall have full power to hire, direct, manage, and discharge employees of the facility, subject to any contractual rights they may have. The receiver shall pay employees at the same rate of compensation, including benefits, that the employees would have received from the licensee.

(B) To preserve patient funds. The receiver shall be entitled to, and shall take, possession of all property or assets of residents which are in the possession of the licensee or operator of the facility. The receiver shall preserve all property, assets, and records of residents of which the receiver takes possession.

(C) To contract for outside services as may be needed for the operation of the long-term health care facility. Any contract for outside services in excess of three thousand dollars ($3,000) shall be approved by the court.

(D) To pay commercial creditors of the long-term health care facility. Except as provided in Section 1329.5, the receiver shall honor all leases, mortgages, and secured transactions affecting the building in which the facility is located and all goods and fixtures in the building of which the receiver has taken possession, but only to the extent of payments which, in the case of a rental agreement, are for the use of the property during the period of receivership, or which, in the case of a purchase agreement, come due during the period of receivership.

(E) To receive a salary, as approved by the court.

(F) To do all things necessary and proper to maintain and operate the facility in accordance with sound fiscal policies. The receiver shall take action as is reasonably necessary to protect or conserve the assets or property of which the receiver takes possession and may use such assets or property only in the performance of the powers and duties set out in this section and by order of the court.

(G) To ask the court for direction in the treatment of debts incurred prior to the appointment, where the licensee's debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the facility, or where payment of the debts will interfere with the purposes of receivership.

(b) A person who is served with notice of an order of the court appointing a receiver and of the receiver's name and address shall be liable to pay the receiver, rather than the licensee, for any goods or services provided by the long-term health care facility after the date of the order. The receiver shall give a receipt for each payment and shall keep a copy of each receipt on file. The receiver shall deposit amounts received in a special account and shall use this account for all disbursements. Payment to the receiver pursuant to this subdivision shall discharge the obligation to the extent of the payment and shall not thereafter be the basis of a claim by the licensee or any other person. A resident may not be discharged nor may any contract or rights be forfeited or impaired, nor may any forfeiture be effected or liability increased, by reason of an omission to pay the licensee, operator, or other person a sum paid to the receiver pursuant to this subdivision.

(c) Nothing contained in this section shall be construed to suspend, during the temporary management by the receiver, any obligation of the licensee for payment of local, state, or federal taxes. No licensee may be held liable for acts or omissions of the receiver during the term of the temporary management.

(d) Upon petition of the receiver, the court may order immediate payment to the receiver for past services which have been rendered and billed, and the court may also order a sum not to exceed one month's advance payment to the receiver of any sums that will become payable under the Medi-Cal program.

SEC. 4. (a) The Legislature finds and declares that abrupt closure of facilities may in many cases result from the facilities' loss of certification for Medi-Cal participation pursuant to Section 14110 of the Welfare and Institutions Code. In order to determine the extent that decertification and other factors contribute to the problem of abrupt facility closures, it is necessary to have current data relating to the relationship between these factors and facility closures.

(b) The State Department of Health Services shall submit a report to the Legislature on or before March 1, 1993, which contains all of the following information for each of the preceding three years for all intermediate care facilities licensed to provide long-term care for persons with developmental disabilities:

(1) The number of facilities, by licensure category, notified of decertification proceedings.

(2) The number of facilities, by licensure category, actually decertified.

(3) The number of facilities, by licensure category, which closed voluntarily or were transferred to new management by the prior

operator, and a statement of the reasons therefor.

(4) The number of facilities placed under receivership, a statement of actions taken by the department in each instance, and a statement of the current status of the facilities.

(5) The number of facilities requesting technical assistance, actions taken by the department in each instance, and current status of each facility.

(6) The number of residents of voluntarily closed or decertified facilities, and the number of residents of facilities placed under receivership.

(7) A statement of the disposition of the residents under each action listed in paragraph (6).

(8) For each facility operated under a receivership as described in Article 8 (commencing with Section 1325) of Chapter 2 of Division 2 of the Health and Safety Code, a statement of the actual cost to the state, as compared to the rate of payment to the prior facility operator, for operation of the facility by a receiver and the source or sources of the total cost of operation.

(9) Recommendations to the Legislature regarding legislative, regulatory, or budgetary changes necessary to avoid unwarranted abrupt closure of existing facilities.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The precipitous release of a large number of persons with developmental disabilities due to the closure of a long-term health care facility may result in harm to the clients of the facility, therefore, it is necessary that this act take effect immediately.

CHAPTER 1386

An act to amend Section 7125 of, and to add Sections 7019.5, 7109.2, 7125.1, 7125.2, and 7145.5 to, the Business and Professions Code, relating to contractors, and making an appropriation therefor.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 7019.5 is added to the Business and Professions Code, to read:

7019.5. The board shall contract for a feasibility study relating to the development of a system for joint enforcement actions with respect to contractors by the board, the Department of Industrial Relations, the Employment Development Department, and the Franchise Tax Board. The study should include, but not be limited

to, the means of accomplishing the following:

(a) Establishment of a common identification number which may be utilized by all those agencies.

(b) Assessment of the current state of technology in the affected departments.

(c) Assessment of the ability, and any impediments, of the affected departments to share information.

(d) Comparison of the standards of proof in the issuance of citations and other administrative enforcement actions.

(e) Ways to consolidate enforcement actions and procedures among the departments.

SEC. 2. Section 7109.2 is added to the Business and Professions Code, to read:

7109.2. The failure of any person licensed pursuant to this chapter or any unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the provisions of this chapter, to maintain workers' compensation insurance, shall result in the automatic suspension of the person's license by operation of law, or with respect to an unlicensed individual acting in the capacity of a contractor who is not otherwise exempted from the provisions of this chapter, citation by the registrar under Section 7099, and an opportunity for a hearing as specified in Section 7099.5, within 90 days of citation. The registrar shall notify by certified mail any licensee who fails to maintain workers' compensation that his or her license shall be automatically suspended 30 days from the date of the notice. Reinstatement shall be made at any time following the suspension by showing proof of a certificate of workers' compensation insurance as specified in Section 7071.20.

SEC. 3. Section 7125 of the Business and Professions Code is amended to read:

7125. Every person licensed as a contractor shall report in writing the name and address of the insurer carrying workers' compensation insurance on his or her employees to the registrar within 90 days after any policy of insurance is issued to him or her and he or she shall send a copy of this report to the insurer.

The insurer, including the State Compensation Insurance Fund, shall thereafter report to the registrar any cancellation or lapse of the policy within 10 days after such cancellation or lapse. A renewal of a policy or a new policy in lieu of one that has expired is not considered a cancellation or lapse.

SEC. 4. Section 7125.1 is added to the Business and Professions Code, to read:

7125.1. The board shall, on and after January 1, 1992, require, as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee. file, or have on file a Certificate of Workers' Compensation Insurance. The certificate shall be issued by one or more insurers duly licensed to write compensation insurance in this state or by securing from the Director of Industrial Relations, a

certificate of consent to self-insure in accordance with Section 3700 of the Labor Code.

This section shall not apply to an applicant or licensee who has no employees, provided that he or she files a statement wi .h the board signed under the penalty of perjury, to the effect that he or she does not employ any person in any manner so as to become subject to the workers' compensation laws of California.

No such certificate shall be required of a holder of an inactive license during the period that the license is inactive.

The board shall include on the license application for issuance, reinstatement, reactivation, or renewal, a statement informing the licensee or applicant of this requirement.

SEC. 5. Section 7125.2 is added to the Business and Professions Code, to read:

7125.2. (a) The registrar shall accept a certificate required by Section 7125.1 as of the effective date shown on the certificate, if the certificate is received by the registrar within 90 days after that date, and shall reinstate the license to which the certificate pertains, if otherwise eligible, retroactive to the effective date of the certificate.

(b) Notwithstanding subdivision (a), the registrar shall accept the certificate as of the effective date shown on the certificate, even if the certificate is n t received by the registrar within 90 days after that date, upon a showing by the licensee, on a form acceptable to the registrar, that the failure to have a certificate on file was due to circumstances beyond the control of the licensee. The registrar shall reinstate the license to which the certificate pertains, if otherwise eligible, retroactive to the effective date of the certificate.

SEC. 6. Section 7145.5 is added to the Business and Professions Code, to read:

7145.5. (a) The registrar may refuse to issue, reinstate, reactivate, or renew a license or may suspend a license for the failure of a licensee to resolve all outstanding final liabilities, which include taxes, additions to tax, penalties, interest and any fees that may be assessed by the board, the Department of Industrial Relations, the Employment Development Department, or the Franchise Tax Board. The refusal or suspension provided by this section shall be applicable only if the registrar has mailed a notice preliminary to the refusal or suspension which indicates that the license will be refused or suspended by a date certain. This preliminary notice shall be mailed to the licensee at least 60 days before the date certain.

(b) In the case of outstanding final liabilities assessed by the Franchise Tax Board, this section shall be operative within 60 days after the Contractor's State Licensing Board has provided the Franchise Tax Board with the information required under Section 30, relating to licensing information which includes the federal employee identification number or social security number.

(c) All versions of the application for contractor's licenses shall include, as part of the application, an authorization by the applicant, in the form and manner mutually agreeable to the Franchise Tax

Board and the board, for the Franchise Tax Board to disclose the tax information that is required for the registrar to administer this section. The Franchise Tax Board may from time to time audit these authorizations.

SEC. 7. The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the Contractors' License Fund to the Contractors' State License Board for purposes of the study mandated by this act.

CHAPTER 1387

An act to add Sections 10113.1 and 10113.2 to the Insurance Code, to add Section 17131.5 to the Revenue and Taxation Code, and to add Sections 11021 and 11022 to the Welfare and Institutions Code, relating to insurance, and making an appropriation therefor.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 10113.1 is added to the Insurance Code, to read:

10113.1. (a) As used in this section, a "living benefits contract" means an agreement entered into between a person owning a life insurance policy upon the life of a person with a catastrophic or life-threatening illness or condition and another person by which the policy owner receives compensation or anything of value less than the death benefits of the insurance policy in return for an assignment, transfer, sale, devise, or bequest of the death benefits or ownership of the insurance policy, but does not include an assignment of a life insurance policy to a licensed lending institution or credit union as collateral for a loan.

(b) A living benefits contract shall not include a provision for payment of cash surrender values, loans or other benefits made by an insurer in accordance with the policy provisions.

(c) Any person entering into a living benefits contract with any person with a catastrophic or life-threatening illness or condition shall first obtain the following:

(1) A written statement from a licensed medical practitioner attending the person that the person is of sound mind and under no constraint or undue influence.

(2) A duly witnessed signed document in which the person consents to the living benefits contract, acknowledges the catastrophic or life-threatening illness, represents that he or she has a full and complete understanding of the living benefits contract, that he or she has a full and complete understanding of the benefits of the life insurance policy, a release of his or her medical records,

and acknowledges that he or she has entered into the contract freely and voluntarily.

(d) No person domiciled, residing or conducting business in California may do any of the following unless he or she has complied with subdvision (c):

(1) Enter into a living benefits contract with any person, domiciled or residing in California.

(2) Execute a living benefits contract in whole or in part in this state.

(e) A violation of this section is a misdemeanor.

SEC. 2. Section 10113.2 is added to the Insurance Code, to read:

10113.2. (a) This section applies to any person entering into or soliciting living benefits contracts pursuant to Section 10113.1.

(b) (1) No person may enter into or solicit living benefits contracts pursuant to Section 10113.1 unless that person has been licensed by the commissioner under this section. The person shall file an application for a license in the form prescribed by the commissioner, and the application shall be accompanied by a fee of one thousand dollars ($1,000). The applicant shall provide any information the commissioner may require. The commissioner may issue a license, or deny the application if, in his or her discretion, it is determined that it is contrary to the interests of the public to issue a license to the applicant. The reasons for a denial shall be set forth in writing.

(2) Whenever it appears to the commissioner that it is contrary to the interests of the public for a person licensed pursuant to this section to continue to transact living benefits contracts business, he or she shall issue a notice to the licensee stating the reasons therefor. If, after a hearing, the commissioner concludes that it is contrary to the interests of the public for the licensee to continue to transact living benefits contracts business, he or she may revoke the person's license, or issue an order suspending the license for a period as determined by the commissioner. Any hearing conducted pursuant to this paragraph shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the hearing may be conducted by administrative law judges chosen pursuant to Section 11502 or appointed by the commissioner, and the commissioner shall have the powers granted therein.

(3) Each licensee shall owe and pay in advance to the commissioner an annual renewal fee of one hundred seventy-seven dollars ($177). This fee shall be for annual periods commencing on July 1 of each year and ending on June 30 of each year, and shall be due on each March 1 and shall be delinquent on and after each April 1.

(4) Any licensee which intends to discontinue transacting living benefits contracts in this state shall so notify the commissioner, and shall surrender its license.

(c) A living benefits licensee shall file with the department a copy

of all living benefits contract forms used in this state. No licensee may use any contract in this state unless it has been approved by the commissioner. Any contract form filed with the commissioner shall be deemed approved if it has not been disapproved within 60 days of filing. The commissioner shall disapprove a contract form if, in his or her discretion, the contract, or provisions contained therein, are contrary to the interests of the public, or otherwise misleading or unfair to the consumer. The commissioner may rescind an approval for any reason or on any basis which would have justified initial disapproval. In the case of disapproval or rescission of approval, the licensee may, within 15 days of notice of the disapproval or rescission, request a hearing before the commissioner or his or her designee, and the hearing shall be held within 30 days of the request.

(d) Living benefits licensees shall be required to disclose or advise any applicant for a living benefits contract, at the time of solicitation for the contract, of all of the following:

(1) Possible alternatives to living benefits contracts for persons with catastrophic or life threatening illness, including, but not limited to, accelerated benefits options that may be offered by the life insurer.

(2) Tax consequences that may result from entering into a living benefits contract.

(3) Consequences for interruption of public assistance as provided by information provided by the State Department of Health Services and the State Department of Social Services under Section 11022 of the Welfare and Institutions Code.

(e) All medical information solicited or obtained by any person soliciting or entering into a living benefits contract shall be subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1, concerning confidentiality of medical information.

(f) The commissioner may adopt rules and regulations reasonably necessary to govern living benefits contracts and transactions. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a death benefit under a life insurance policy.

(g) The commissioner may, whenever he or she deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner shall have the authority to order any licensee or applicant to produce any records, books, files, or other information as is reasonably necessary to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(h) The commissioner may investigate the conduct of any licensee, its officers, employees, agents, or any other person involved in the business of the licensee, whenever the commissioner has

reason to believe that the licensee may have acted, or may be acting, in violation of the law, or otherwise contrary to the interests of the public. The commissioner may initiate an investigation on his or her own, or upon a complaint filed by any other person.

(i) The commissioner may issue orders to licensees whenever he or she determines that it is reasonably necessary to ensure or obtain compliance with this section, or Section 10113.1. This authority includes, but is not limited to, orders directing a licensee to cease and desist in any practice which is in violation of this section, or Section 10113.1, or otherwise contrary to the interests of the public. Any licensee to which an order pursuant to this subdivision is issued may, within 15 days of receipt of that order, request a hearing at which the licensee may challenge the order.

(j) The commissioner may, after notice and a hearing at which it is determined that a licensee has violated this section or Section 10113.1 or any order issued pursuant to this section order the licensee to pay a monetary penalty of up to ten thousand dollars ($10,000), which may be recovered in a civil action. Any hearing conducted pursuant to this subdivision shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the hearing may be conducted by administrative law judges chosen pursuant to Section 11502 or appointed by the commissioner, and the commissioner shall have the powers granted therein.

(k) Each licensee shall file with the commissioner on or before March 1 of each year an annual statement in the form prescribed by the commissioner. The information which the commissioner may require in the annual statement shall include, but not be limited to, the data required to satisfy the commissioner's report to the Legislature due on or before December 1, 1994.

(*l*) No person who is not a resident of California may receive or maintain a license unless a written designation of an agent for service or process is filed and maintained with the commissioner. The provisions of Article 3 (commencing with Section 1600) of Chapter 4 of Part 2 shall apply to living benefits licensees as if they were foreign insurers, their license a certificate of authority, and the living benefits contracts a policy, and the commissioner may modify the agreement set forth in Section 1604 accordingly.

(m) No person licensed pursuant to this section shall engage in any false or misleading advertising, solicitation, or practice. The provisions of Article 6 (commencing with Section 780) and Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 shall apply to living benefits licensees as if they were insurers, their license a certificate of authority or producer's license, and the living benefits contracts a policy, and the commissioner shall liberally construe these provisions so as to protect the interests of the public.

(n) Any person who enters into a living benefits contract with a living benefits licensee shall have the absolute right to rescind the contract within 15 days of execution of the contract, and any waiver

or contract language contrary to this subdivision shall be void.

(o) A violation of this section is a misdemeanor.

SEC. 3. Section 17131.5 is added to the Revenue and Taxation Code, to read:

17131.5. For taxable years beginning on or after January 1, 1991, gross income does not include any amounts received by a person owning a life insurance policy (whether in a single sum or otherwise) under any policy of life or endowment insurance or contract supplemental thereto, if the amounts are paid pursuant to Section 10113.1 or 10113.2 of the Insurance Code.

SEC. 4. Section 11021 is added to the Welfare and Institutions Code, to read:

11021. Notwithstanding any other provision of law, no individual who is an applicant or recipient of aid or assistance under a state plan approved under Title IV, X, XIV, XVI, or XIX, of the federal Social Security Act, assistance funded by payments under Title V or XX of the federal Social Security Act, or of benefits under the Supplemental Security Income program established by Title XVI of the federal Social Security Act shall:

(a) Be required as a condition of eligibility for or of continuing to receive that aid, assistance, or benefit, to make an election to receive funds according to Section 10113.1 of the Insurance Code, or to receive funds under an accelerated death benefit under a policy of life insurance.

(b) By reason of failure to make such an election, be denied or suffer a reduction in the amount of aid, assistance, or benefits, unless that individual would thereby exceed federal liability limits under Title IV, X, XIV, XVI, or XIX of the federal Social Security Act, assistance funded by payments under Title V of XX of the federal Social Security Act, or of benefits under the Supplemental Security Income program established by Title XVI of the federal Social Security Act.

For purposes of this section, "accelerated death benefit" means any payment made by the life insurer under the terms of a life insurance policy while the insured individual is alive as a result of a recalculation of the insured individual's life expectancy by the life insurer.

SEC. 5. Section 11022 is added to the Welfare and Institutions Code, to read:

11022. The State Department of Health Services and the State Department of Social Services shall prepare information on the effect of funds received according to Sections 10113.1 and 10113.2 of the Insurance Code as to eligibility to receive or to continue to receive aid, assistance, or benefits from all federal, state, or other relevant assistance programs. All information shall be prepared for distribution to benefit counselors and living benefits corporations to be distributed at the time of solicitation by living benefit corporations.

SEC. 6. The amount of forty-seven thousand dollars ($47,000) is

appropriated to the Department of Insurance from the Insurance Fund for the purposes of developing the forms and regulations which are authorized or required by this bill, and for the initial implementation of the requirements of this bill.

SEC. 7. The Insurance Commissioner shall report to the Legislature, on or before December 1, 1994, on the number of persons doing living benefits business in California; the number of living benefits contracts in California; the fairness of the discount rate in the living benefits contracts; and recommendations for legislative action for consumer protection.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code or Section 17034 of the Revenue and Taxation Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1388

An act to amend Section 35780 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 35780 of the Vehicle Code is amended to read:

35780. (a) The Department of Transportation or local authorities, with respect to highways under their respective jurisdictions, may, at their discretion upon application and if good cause appears, issue a special permit authorizing the applicant:

(1) To operate or move a vehicle or combination of vehicles or special mobile equipment of a size or weight of vehicle or load exceeding the maximum specified in this code. Permits for oversize buses may be issued pursuant to this paragraph only for the operation of a bus not more than 45 feet in length, on a per-trip basis, for operation on those highways specified in Section 35401.5, as designated by the Department of Transportation or local authorities, with respect to highways under their respective jurisdictions.

(2) To use corrugations on the periphery of the movable tracks on a traction engine or tractor, the propulsive power of which is not

exerted through wheels resting upon the roadway but by means of a flexible band or chain.

(3) Under emergency conditions, to operate or move a type of vehicle otherwise prohibited hereunder, upon any highway under the jurisdiction of the party granting the permit and for the maintenance of which the party is responsible.

(4) To operate or move a vehicle or combination of vehicles transporting loads composed of logs only for the purpose of crossing a highway from one private property to another without complying with any or all of the equipment requirements of Division 12 (commencing with Section 24000) and Division 13 (commencing with Section 29000). These crossings shall be as near to a right angle to the roadway as is practical and shall not include any travel parallel to the roadway. The Department of Transportation shall determine standards and conditions upon which permits shall be issued and any permit not in compliance with those standards and conditions shall be invalid, except that a permit may contain more restrictive conditions if the issuing authority deems it appropriate.

(b) Under conditions prescribed by the Department of Transportation or the local authority, the Department of Transportation or local authority may accept applications made by, and issue permits directly to, an applicant or permit service by any of the following processes:

(1) In writing.

(2) By an authorized facsimile process.

(3) Through an authorized computer and modem connection.

CHAPTER 1389

An act to add Chapter 3 (commencing with Section 14200) to Division 3 of Title 2 of the Government Code, relating to telecommuting.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Chapter 3 (commencing with Section 14200) is added to Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3. STATE EMPLOYEE TELECOMMUTING PROGRAM

14200. As used in this chapter, "telecommuting" means the partial or total substitution of computers or telecommunication technologies, or both, for the commute to work by employees residing in California.

14201. Every state agency, including every board and

commission, may incorporate the telecommuting work option as an element of its transportation management programs, which are designed to reduce the number of commute trips by state employees.

Agencies that participated in the experimental studies described in Section 15276 may continue and expand those telecommuting programs in accordance with the policy, procedures, and guidelines developed by the Department of General Services in conjunction with those participating agencies. Those agencies not having participated in the initial experimental studies described in Section 15276 may comply with the policy, procedures, and guidelines developed by the Department of General Services in conjunction with a multiagency group that participated in those studies.

14202. The Department of General Services shall establish a unit for the purpose of overseeing telecommuting programs established pursuant to this chapter. This unit shall do all of the following:

(a) Coordinate and facilitate the interagency exchange of information regarding the state's telecommuting program, and establish and lead a multiagency telecommuting advisory group for these purposes.

(b) Develop and update policy, procedures, and guidelines to assist agencies in the planning and implementation of telecommuting programs.

(c) Assist state agencies in requesting the siting of satellite work stations and develop procedures to track the needs of agencies and identify potential office locations.

14203. Each state agency shall evaluate its telecommuting program. The Department of General Services shall establish criteria for evaluating the state's telecommuting program and recommend modifications, if necessary.

CHAPTER 1390

An act to add Sections 22401.6 and 22651.5 to the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 22401.6 is added to the Education Code, to read:

22401.6. An application for an unmodified retirement allowance payable by the system shall contain the signature of the spouse of the member, unless the member declares, in writing, under penalty of perjury, that either: (a) the member does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse; (b) the spouse is incapable of executing the acknowledgement because

of an incapacitating mental or physical condition; (c) or the member and spouse have executed a marriage settlement agreement pursuant to Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code which makes the community property law inapplicable to the marriage.

For the purposes of this act, a spouse who refuses to sign the application for the unmodified allowance may be considered a "nonmember spouse" as defined in Section 22651, and may petition the court to divide the retirement benefit as provided in Sections 22651.5 to 22666, inclusive.

The sole purpose of this section is to provide for spousal protection in the selection of specified benefits made by a member.

SEC. 2. Section 22651.5 is added to the Education Code, to read:

22651.5. For purposes of this chapter and Section 23702, "nonmember spouse" means the spouse or former spouse who is being or has been awarded a community property interest in the service credit and accumulated retirement contributions of the member or the benefits of a retirant. A nonmember spouse who is awarded a separate account of service credit and accumulated retirement contributions is not a member of the system. A nonmember spouse who receives a retirement allowance or is awarded an interest in a retirement allowance of a retirant is not a retirant of the system.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1391

An act to add Title 1.6F (commencing with Section 1789.30) to Part 4 of Division 3 of the Civil Code, relating to check cashers.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Title 1.6F (commencing with Section 1789.30) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.6F. CHECK CASHERS

1789.30. Every check casher, as applicable to the services provided, shall post a complete, detailed, and unambiguous schedule of all fees for the (a) cashing of checks, drafts, money orders, or other commercial paper serving the same purpose, (b) for the sale or issuance of money orders, and (c) for the initial issuance of any identification card. Each check casher shall also post a list of valid identification which is acceptable in lieu of identification provided by the check casher. The information required by this section shall be clear, legible, and in letters not less than one-half inch in height. The information shall be posted in a conspicuous location in the unobstructed view of the public within the check casher's premises.

1789.31. As used in this title, a "check casher" means a person or entity that for compensation, in whole or in part, engages in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. "Check casher" does not include a state or federally chartered bank or savings association. "Check casher" does not include a retail seller as defined in subdivision (b) of Section 1749.1 that cashes checks or issues money orders for a minimum flat fee not exceeding two dollars ($2) as a service to its customers that is incidental to its main purpose or business.

1789.32. Failure to post information as required by this title, or the imposition of fees or identification requirements contrary to the information posted, shall constitute an unfair business practice within the meaning of Section 17200 of the Business and Professions Code.

CHAPTER 1392

An act to amend Section 2034 of the Code of Civil Procedure, and to amend Section 68092.5 of the Government Code, relating to expert witnesses.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 2034 of the Code of Civil Procedure is amended to read:

2034. (a) After the setting of the initial trial date for the action, any party may obtain discovery by demanding that all parties simultaneously exchange information concerning each other's expert trial witnesses to the following extent:

(1) Any party may demand a mutual and simultaneous exchange by all parties of a list containing the name and address of any natural

person, including one who is a party, whose oral or deposition testimony in the form of an expert opinion any party expects to offer in evidence at the trial.

(2) If any expert designated by a party under paragraph (1) is a party or an employee of a party, or has been retained by a party for the purpose of forming and expressing an opinion in anticipation of the litigation or in preparation for the trial of the action, the designation of that witness shall include or be accompanied by an expert witness declaration under paragraph (2) of subdivision (f).

(3) Any party may also include a demand for the mutual and simultaneous production for inspection and copying of all discoverable reports and writings, if any, made by any expert described in paragraph (2) in the course of preparing that expert's opinion.

This section does not apply to exchanges of lists of experts and valuation data in eminent domain proceedings under Chapter 7 (commencing with Section 1258.010) of Title 7 of Part 3.

(b) Any party may make a demand for an exchange of information concerning expert trial witnesses without leave of court. A party shall make this demand no later than the 10th day after the initial trial date has been set, or 70 days before that trial date, whichever is closer to the trial date.

(c) A demand for an exchange of information concerning expert trial witnesses shall be in writing and shall identify, below the title of the case, the party making the demand. The demand shall state that it is being made under this section.

The demand shall specify the date for the exchange of lists of expert trial witnesses, expert witness declarations, and any demanded production of writings. The specified date of exchange shall be 50 days before the initial trial date, or 20 days after service of the demand, whichever is closer to the trial date, unless the court, on motion and a showing of good cause, orders an earlier or later date of exchange.

(d) The party demanding an exchange of information concerning expert trial witnesses shall serve the demand on all parties who have appeared in the action.

(e) A party who has been served with a demand to exchange information concerning expert trial witnesses may promptly move for a protective order. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense. The protective order may include, but is not limited to, one or more of the following directions:

(1) That the demand be quashed because it was not timely served.

(2) That the date of exchange be earlier or later than that specified in the demand.

(3) That the exchange be made only on specified terms and conditions.

(4) That the production and exchange of any reports and writings of experts be made at a different place or at a different time than that specified in the demand.

(5) That some or all of the parties be divided into sides on the basis of their identity of interest in the issues in the action, and that the designation of any experts as described in paragraph (2) of subdivision (a) be made by any side so created.

(6) That a party or a side reduce the list of employed or retained experts designated by that party or side under paragraph (2) of subdivision (a).

If the motion for a protective order is denied in whole or in part, the court may order that the parties against whom the motion is brought, provide or permit the discovery against which the protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) All parties who have appeared in the action shall exchange information concerning expert witnesses in writing on or before the date of exchange specified in the demand. The exchange of information may occur at a meeting of the attorneys for the parties involved or by a mailing on or before the date of exchange.

(1) The exchange of expert witness information shall include either of the following:

(A) A list setting forth the name and address of any person whose expert opinion that party expects to offer in evidence at the trial.

(B) A statement that the party does not presently intend to offer the testimony of any expert witness.

(2) If any witness on the list is an expert as described in paragraph (2) of subdivision (a), the exchange shall also include or be accompanied by an expert witness declaration signed only by the attorney for the party designating the expert, or by that party if that party has no attorney. This declaration shall be under penalty of perjury and shall contain:

(A) A brief narrative statement of the qualifications of each expert.

(B) A brief narrative statement of the general substance of the testimony that the expert is expected to give.

(C) A representation that the expert has agreed to testify at the trial.

(D) A representation that the expert will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including any opinion and its basis, that the expert is expected to give at trial.

(E) A statement of the expert's hourly and daily fee for providing

deposition testimony.

(g) If a demand for an exchange of information concerning expert trial witnesses includes a demand for production of reports and writings as described in paragraph (3) of subdivision (a), all parties shall produce and exchange, at the place and on the date specified in the demand, all discoverable reports and writings, if any, made by any designated expert described in paragraph (2) of subdivision (a).

(h) Within 20 days after the exchange described in subdivision (f), any party who engaged in the exchange may submit a supplemental expert witness list containing the name and address of any experts who will express an opinion on a subject to be covered by an expert designated by an adverse party to the exchange, if the party supplementing an expert witness list has not previously retained an expert to testify on that subject. This supplemental list shall be accompanied by an expert witness declaration under paragraph (2) of subdivision (f) concerning those additional experts, and by all discoverable reports and writings, if any, made by those additional experts. The party shall also make those experts available immediately for a deposition under subdivision (i), which deposition may be taken even though the time limit for discovery under Section 2024 has expired.

(i) On receipt of an expert witness list from a party, any other party may take the deposition of any person on the list. The procedures for taking oral and written depositions set forth in Sections 2025, 2026, 2027, and 2028 apply to a deposition of a listed trial expert witness except as follows:

(1) The deposition of any expert described in paragraph (2) of subdivision (a) shall be taken at a place that is within 75 miles of the courthouse where the action is pending. However, on motion for a protective order by the party designating an expert witness, and on a showing of exceptional hardship, the court may order that the deposition be taken at a more distant place from the courthouse.

(2) A party desiring to depose any expert witness, other than a party or employee of a party, who is either (A) an expert described in paragraph (2) of subdivision (a), (B) a treating physician and surgeon or other treating health care practitioner who is to be asked to express an opinion during the deposition, or (C) an architect, professional engineer, or licensed land surveyor, who was involved with the original project design or survey for which he or she is asked to express an opinion within his or her expertise and relevant to the action or proceeding, shall pay the reasonable and customary hourly or daily fee for the actual time consumed in the examination of that expert by any party attending the deposition. In a worker's compensation case arising under Division 4 (commencing with Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor Code, a party desiring to depose any expert on another party's expert witness list shall pay this fee.

The party taking the deposition shall either accompany the service of the deposition notice with a tender of the expert's fee based on the

anticipated length of the deposition or tender that fee at the commencement of the deposition. The expert's fee shall be delivered to the attorney for the party designating the expert. If the deposition of the expert takes longer than anticipated, the party giving notice of the deposition shall pay the balance of the expert's fee within five days of receipt of an itemized statement from the expert. The party designating the expert is responsible for any fee charged by the expert for preparing for the deposition and for traveling to the place of the deposition, as well as for any travel expenses of the expert.

(3) The service of a proper deposition notice accompanied by the tender of the expert witness fee described in paragraph (2) is effective to require the party employing or retaining the expert to produce the expert for the deposition. If the party noticing the deposition fails to tender the expert's fee under paragraph (2), the expert shall not be deposed at that time unless the parties stipulate otherwise.

(4) If a party desiring to take the deposition of an expert witness under this subdivision deems that the hourly or daily fee of that expert for providing deposition testimony is unreasonable, that party may move for an order setting the compensation of that expert. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall also be given to the expert.

The court shall set the fee of the expert for providing deposition testimony if it determines that the fee demanded by that expert is unreasonable.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to set the expert witness fee, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) Except as provided in subdivisions (k), (*l*), and (m), on objection of any party who has made a complete and timely compliance with subdivision (f), the trial court shall exclude from evidence the expert opinion of any witness that is offered by any party who has unreasonably failed to do any of the following:

(1) List that witness as an expert under subdivision (f).

(2) Submit an expert witness declaration.

(3) Produce reports and writings of expert witnesses under subdivision (g).

(4) Make that expert available for a deposition under subdivision (i).

(k) On motion of any party who has engaged in a timely exchange of expert witness information, the court may grant leave to (1) augment that party's expert witness list and declaration by adding the name and address of any expert witness whom that party has subsequently retained, or (2) amend that party's expert witness declaration with respect to the general substance of the testimony

that an expert previously designated is expected to give. This motion shall be made a sufficient time in advance of the time limit for the completion of discovery under Section 2024 to permit the deposition of any expert to whom the motion relates to be taken within that time limit. However, under exceptional circumstances, the court may permit the motion to be made at a later time. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The demand, and all expert witness lists and declarations exchanged in response to it, shall be lodged with the court when their contents become relevant to an issue in any pending matter in the action. The court shall grant leave to augment or amend an expert witness list or declaration only after taking into account the extent to which the opposing party has relied on the list of expert witnesses, and after determining that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits, and that the moving party either (1) would not in the exercise of reasonable diligence have determined to call that expert witness or have decided to offer the different or additional testimony of that expert witness, or (2) failed to determine to call that expert witness, or to offer the different or additional testimony of that expert witness as a result of mistake, inadvertence, surprise, or excusable neglect, provided that the moving party (1) has sought leave to augment or amend promptly after deciding to call the expert witness or to offer the different or additional testimony, and (2) has promptly thereafter served a copy of the proposed expert witness information concerning the expert or the testimony described in subdivision (f) on all other parties who have appeared in the action. Leave shall be conditioned on the moving party making the expert available immediately for a deposition under subdivision (i), and on such other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to augment or amend expert witness information, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances made the imposition of the sanction unjust.

(*l*) On motion of any party who has failed to submit expert witness information on the date specified in a demand for that exchange, the court may grant leave to submit that information on a later date. This motion shall be made a sufficient time in advance of the time limit for the completion of discovery under Section 2024 to permit the deposition of any expert to whom the motion relates to be taken within that time limit. However, under exceptional

circumstances, the court may permit the motion to be made at a later time. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court shall grant leave to submit tardy expert witness information only after taking into account the extent to which the opposing party has relied on the absence of a list of expert witnesses, and determining that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits, and that the moving party (1) failed to submit that information as the result of mistake, inadvertence, surprise, or excusable neglect, (2) sought that leave promptly after learning of the mistake, inadvertence, surprise, or excusable neglect, and (3) has promptly thereafter served a copy of the proposed expert witness information described in subdivision (f) on all other parties who have appeared in the action. This order shall be conditioned on the moving party making that expert available immediately for a deposition under subdivision (i), and on such other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to submit tardy expert witness information, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(m) A party may call as a witness at trial an expert not previously designated by that party if: (1) that expert has been designated by another party and has thereafter been deposed under subdivision (i), or (2) that expert is called as a witness to impeach the testimony of an expert witness offered by any other party at the trial. This impeachment may include testimony to the falsity or nonexistence of any fact used as the foundation for any opinion by any other party's expert witness, but may not include testimony that contradicts the opinion.

(n) The demand for an exchange of information concerning expert trial witnesses, and any expert witness lists and declarations exchanged shall not be filed with the court. The party demanding the exchange shall retain both the original of the demand, with the original proof of service affixed, and the original of all expert witness lists and declarations exchanged in response to the demand until six months after final disposition of the action. At that time, all originals may be destroyed unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

SEC. 2. Section 2034 of the Code of Civil Procedure is amended

to read:

2034. (a) After the setting of the initial trial date for the action, any party may obtain discovery by demanding that all parties simultaneously exchange information concerning each other's expert trial witnesses to the following extent:

(1) Any party may demand a mutual and simultaneous exchange by all parties of a list containing the name and address of any natural person, including one who is a party, whose oral or deposition testimony in the form of an expert opinion any party expects to offer in evidence at the trial.

(2) If any expert designated by a party under paragraph (1) is a party or an employee of a party, or has been retained by a party for the purpose of forming and expressing an opinion in anticipation of the litigation or in preparation for the trial of the action, the designation of that witness shall include or be accompanied by an expert witness declaration under paragraph (2) of subdivision (f).

(3) Any party may also include a demand for the mutual and simultaneous production for inspection and copying of all discoverable reports and writings, if any, made by any expert described in paragraph (2) in the course of preparing that expert's opinion.

This section does not apply to exchanges of lists of experts and valuation data in eminent domain proceedings under Chapter 7 (commencing with Section 1258.010) of Title 7 of Part 3.

(b) Any party may make a demand for an exchange of information concerning expert trial witnesses without leave of court. A party shall make this demand no later than the 10th day after the initial trial date has been set, or 70 days before that trial date, whichever is closer to the trial date.

(c) A demand for an exchange of information concerning expert trial witnesses shall be in writing and shall identify, below the title of the case, the party making the demand. The demand shall state that it is being made under this section.

The demand shall specify the date for the exchange of lists of expert trial witnesses, expert witness declarations, and any demanded production of writings. The specified date of exchange shall be 50 days before the initial trial date, or 20 days after service of the demand, whichever is closer to the trial date, unless the court, on motion and a showing of good cause, orders an earlier or later date of exchange.

(d) The party demanding an exchange of information concerning expert trial witnesses shall serve the demand on all parties who have appeared in the action.

(e) A party who has been served with a demand to exchange information concerning expert trial witnesses may promptly move for a protective order. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice

requires to protect any party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense. The protective order may include, but is not limited to, one or more of the following directions:

(1) That the demand be quashed because it was not timely served.

(2) That the date of exchange be earlier or later than that specified in the demand.

(3) That the exchange be made only on specified terms and conditions.

(4) That the production and exchange of any reports and writings of experts be made at a different place or at a different time than that specified in the demand.

(5) That some or all of the parties be divided into sides on the basis of their identity of interest in the issues in the action, and that the designation of any experts as described in paragraph (2) of subdivision (a) be made by any side so created.

(6) That a party or a side reduce the list of employed or retained experts designated by that party or side under paragraph (2) of subdivision (a).

If the motion for a protective order is denied in whole or in part, the court may order that the parties against whom the motion is brought, provide or permit the discovery against which the protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) All parties who have appeared in the action shall exchange information concerning expert witnesses in writing on or before the date of exchange specified in the demand. The exchange of information may occur at a meeting of the attorneys for the parties involved or by a mailing on or before the date of exchange.

(1) The exchange of expert witness information shall include either of the following:

(A) A list setting forth the name and address of any person whose expert opinion that party expects to offer in evidence at the trial.

(B) A statement that the party does not presently intend to offer the testimony of any expert witness.

(2) If any witness on the list is an expert as described in paragraph (2) of subdivision (a), the exchange shall also include or be accompanied by an expert witness declaration signed only by the attorney for the party designating the expert, or by that party if that party has no attorney. This declaration shall be under penalty of perjury and shall contain:

(A) A brief narrative statement of the qualifications of each expert.

(B) A brief narrative statement of the general substance of the testimony that the expert is expected to give.

(C) A representation that the expert has agreed to testify at the trial.

(D) A representation that the expert will be sufficiently familiar with the pending action to submit to a meaningful oral deposition concerning the specific testimony, including any opinion and its basis, that the expert is expected to give at trial.

(E) A statement of the expert's hourly and daily fee for providing deposition testimony.

(g) If a demand for an exchange of information concerning expert trial witnesses includes a demand for production of reports and writings as described in paragraph (3) of subdivision (a), all parties shall produce and exchange, at the place and on the date specified in the demand, all discoverable reports and writings, if any, made by any designated expert described in paragraph (2) of subdivision (a).

(h) Within 20 days after the exchange described in subdivision (f), any party who engaged in the exchange may submit a supplemental expert witness list containing the name and address of any experts who will express an opinion on a subject to be covered by an expert designated by an adverse party to the exchange, if the party supplementing an expert witness list has not previously retained an expert to testify on that subject. This supplemental list shall be accompanied by an expert witness declaration under paragraph (2) of subdivision (f) concerning those additional experts, and by all discoverable reports and writings, if any, made by those additional experts. The party shall also make those experts available immediately for a deposition under subdivision (i), which deposition may be taken even though the time limit for discovery under Section 2024 has expired.

(i) On receipt of an expert witness list from a party, any other party may take the deposition of any person on the list. The procedures for taking oral and written depositions set forth in Sections 2025, 2026, 2027, and 2028 apply to a deposition of a listed trial expert witness except as follows:

(1) The deposition of any expert described in paragraph (2) of subdivision (a) shall be taken at a place that is within 75 miles of the courthouse where the action is pending. However, on motion for a protective order by the party designating an expert witness, and on a showing of exceptional hardship, the court may order that the deposition be taken at a more distant place from the courthouse.

(2) A party desiring to depose any expert witness, other than a party or employee of a party, who is either (A) an expert described in paragraph (2) of subdivision (a) except one who is a party or an employee of a party, (B) a treating physician and surgeon or other treating health care practitioner who is to be asked to express an opinion during the deposition, or (C) an architect, professional engineer, or licensed land surveyor, who was involved with the original project design or survey for which he or she is asked to express an opinion within his or her expertise and relevant to the action or proceeding, shall pay the expert's reasonable and

customary hourly or daily fee for the actual time consumed in the examination of that expert by any party attending the deposition. However, the hourly or daily fee shall not exceed the fee charged the party who retained the expert except where the expert donated his or her services to a charitable or other nonprofit organization. In a worker's compensation case arising under Division 4 (commencing with Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor Code, a party desiring to depose any expert on another party's expert witness list shall pay this fee.

The party taking the deposition shall either accompany the service of the deposition notice with a tender of the expert's fee based on the anticipated length of the deposition or tender that fee at the commencement of the deposition. The expert's fee shall be delivered to the attorney for the party designating the expert. If the deposition of the expert takes longer than anticipated, the party giving notice of the deposition shall pay the balance of the expert's fee within five days of receipt of an itemized statement from the expert. The party designating the expert is responsible for any fee charged by the expert for preparing for the deposition and for traveling to the place of the deposition, as well as for any travel expenses of the expert.

(3) The service of a proper deposition notice accompanied by the tender of the expert witness fee described in paragraph (2) is effective to require the party employing or retaining the expert to produce the expert for the deposition. If the party noticing the deposition fails to tender the expert's fee under paragraph (2), the expert shall not be deposed at that time unless the parties stipulate otherwise.

(4) If a party desiring to take the deposition of an expert witness under this subdivision deems that the hourly or daily fee of that expert for providing deposition testimony is unreasonable, that party may move for an order setting the compensation of that expert. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall also be given to the expert.

The court shall set the fee of the expert for providing deposition testimony if it determines that the fee demanded by that expert is unreasonable.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to set the expert witness fee, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) Except as provided in subdivisions (k), (*l*), and (m), on objection of any party who has made a complete and timely compliance with subdivision (f), the trial court shall exclude from evidence the expert opinion of any witness that is offered by any party who has unreasonably failed to do any of the following:

(1) List that witness as an expert under subdivision (f).

(2) Submit an expert witness declaration.

(3) Produce reports and writings of expert witnesses under subdivision (g).

(4) Make that expert available for a deposition under subdivision (i).

(k) On motion of any party who has engaged in a timely exchange of expert witness information, the court may grant leave to (1) augment that party's expert witness list and declaration by adding the name and address of any expert witness whom that party has subsequently retained, or (2) amend that party's expert witness declaration with respect to the general substance of the testimony that an expert previously designated is expected to give. This motion shall be made a sufficient time in advance of the time limit for the completion of discovery under Section 2024 to permit the deposition of any expert to whom the motion relates to be taken within that time limit. However, under exceptional circumstances, the court may permit the motion to be made at a later time. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The demand, and all expert witness lists and declarations exchanged in response to it, shall be lodged with the court when their contents become relevant to an issue in any pending matter in the action. The court shall grant leave to augment or amend an expert witness list or declaration only after taking into account the extent to which the opposing party has relied on the list of expert witnesses, and after determining that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits, and that the moving party either (1) would not in the exercise of reasonable diligence have determined to call that expert witness or have decided to offer the different or additional testimony of that expert witness, or (2) failed to determine to call that expert witness, or to offer the different or additional testimony of that expert witness as a result of mistake, inadvertence, surprise, or excusable neglect, provided that the moving party (1) has sought leave to augment or amend promptly after deciding to call the expert witness or to offer the different or additional testimony, and (2) has promptly thereafter served a copy of the proposed expert witness information concerning the expert or the testimony described in subdivision (f) on all other parties who have appeared in the action. Leave shal be conditioned on the moving party making the expert available immediately for a deposition under subdivision (i), and on such other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or

opposes a motion to augment or amend expert witness information, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances made the imposition of the sanction unjust.

(*l*) On motion of any party who has failed to submit expert witness information on the date specified in a demand for that exchange, the court may grant leave to submit that information on a later date. This motion shall be made a sufficient time in advance of the time limit for the completion of discovery under Section 2024 to permit the deposition of any expert to whom the motion relates to be taken within that time limit. However, under exceptional circumstances, the court may permit the motion to be made at a later time. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court shall grant leave to submit tardy expert witness information only after taking into account the extent to which the opposing party has relied on the absence of a list of expert witnesses, and determining that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits, and that the moving party (1) failed to submit that information as the result of mistake, inadvertence, surprise, or excusable neglect, (2) sought that leave promptly after learning of the mistake, inadvertence, surprise, or excusable neglect, and (3) has promptly thereafter served a copy of the proposed expert witness information described in subdivision (f) on all other parties who have appeared in the action. This order shall be conditioned on the moving party making that expert available immediately for a deposition under subdivision (i), and on such other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to submit tardy expert witness information, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(m) A party may call as a witness at trial an expert not previously designated by that party if: (1) that expert has been designated by another party and has thereafter been deposed under subdivision (i), or (2) that expert is called as a witness to impeach the testimony of an expert witness offered by any other party at the trial. This impeachment may include testimony to the falsity or nonexistence of any fact used as the foundation for any opinion by any other party's expert witness, but may not include testimony that contradicts the opinion.

(n) The demand for an exchange of information concerning expert trial witnesses, and any expert witness lists and declarations exchanged shall not be filed with the court. The party demanding the exchange shall retain both the original of the demand, with the original proof of service affixed, and the original of all expert witness lists and declarations exchanged in response to the demand until six months after final disposition of the action. At that time, all originals may be destroyed unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

SEC. 3. Section 68092.5 of the Government Code is amended to read:

68092.5. (a) A party requiring testimony before any court, tribunal, or arbiter in any civil action or proceeding from any expert witness, other than a party or employee of a party, who is either, (1) an expert described in paragraph (2) of subdivision (a) of Section 2034 of the Code of Civil Procedure, (2) a treating physician and surgeon or other treating health care practitioner who is to be asked to express an opinion during the action or proceeding, or (3) an architect, professional engineer, or licensed land surveyor who was involved with the original project design or survey for which he or she is asked to express an opinion within his or her expertise and relevant to the action or proceeding, shall pay the reasonable and customary hourly or daily fee for the actual time consumed in the examination of that witness by any party attending the action or proceeding.

The party requiring the attendance shall either accompany the service of the subpoena or notice with a tender of the expert's fee based on the anticipated length of time the expert is required to remain at such place pursuant to the notice or subpoena or tender that fee at the required time of appearance. The expert's fee shall be delivered to the attorney for the party designating the expert. If the appearance of the expert takes longer than anticipated, the party serving the subpoena or notice shall pay the balance of the expert's fee within five days of receipt of an itemized statement from the expert. The party designating the expert is responsible for any fee charged by the expert for preparing for the testimony and for traveling to the place of the civil action or proceeding, as well as for any travel expenses of the expert, unless otherwise determined by the court.

(b) The service of a proper subpoena or notice accompanied by the tender of the expert witness fee described in subdivision (a) is effective to require the party employing or retaining the expert to produce the expert for testimony. If the party serving the notice or subpoena fails to tender the expert's fee under subdivision (a), the expert shall not be required to appear at that time unless the parties stipulate otherwise.

(c) If a party requiring the appearance by subpoena or notice of another party s expert witness under this subdivision deems that the

hourly or daily fee of that expert for providing testimony is unreasonable, that party may move for an order setting the compensation of that expert. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall also be given to the expert.

The court shall set the fee of the expert for providing testimony if it determines that the fee demanded by that expert is unreasonable.

(d) In the event the proceeding at which the expert witness has been notified his or her attendance is required is continued or canceled in advance of the time for which it is scheduled, such witness shall be notified of the continuance or cancellation by the party requiring his or her attendance by the quickest and most reliable means of giving notice under the circumstances. In the event such party fails to give notice as required by this subdivision, then the expert witness shall be entitled to receive the compensation specified in subdivision (a) of this section, notwithstanding his or her failure to give any testimony.

(e) An express contract entered into between a person and the party requesting or requiring the person to testify, relating to compensation, shall be enforceable and shall prevail over the provisions of this section.

(f) The deposition of an expert witness is governed by Section 2034 of the Code of Civil Procedure.

SEC. 4. Section 68092.5 of the Government Code is amended to read:

68092.5. (a) A party requiring testimony before any court, tribunal, or arbiter in any civil action or proceeding from any expert witness, other than a party or employee of a party, who is either, (1) an expert described in paragraph (2) of subdivision (a) of Section 2034 of the Code of Civil Procedure, (2) a treating physician and surgeon or other treating health care practitioner who is to be asked to express an opinion during the action or proceeding, or (3) an architect, professional engineer, or licensed land surveyor who was involved with the original project design or survey for which he or she is asked to express an opinion within his or her expertise and relevant to the action or proceeding, shall pay the reasonable and customary hourly or daily fee for the actual time consumed in the examination of that witness by any party attending the action or proceeding. The hourly or daily fee shall not exceed the fee charged the party who retained the expert except where the expert donated his or her services to a charitable or other nonprofit organization.

The party requiring the attendance shall either accompany the service of the subpoena or notice with a tender of the expert's fee based on the anticipated length of time the expert is required to remain at such place pursuant to the notice or subpoena or tender that fee at the required time of appearance. The expert's fee shall be delivered to the attorney for the party designating the expert. If the

appearance of the expert takes longer than anticipated, the party serving the subpoena or notice shall pay the balance of the expert's fee within five days of receipt of an itemized statement from the expert. The party designating the expert is responsible for any fee charged by the expert for preparing for the testimony and for traveling to the place of the civil action or proceeding, as well as for any travel expenses of the expert, unless otherwise determined by the court.

(b) The service of a proper subpoena or notice accompanied by the tender of the expert witness fee described in subdivision (a) is effective to require the party employing or retaining the expert to produce the expert for testimony. If the party serving the notice or subpoena fails to tender the expert's fee under subdivision (a), the expert shall not be required to appear at that time unless the parties stipulate otherwise.

(c) If a party requiring the appearance by subpoena or notice of another party's expert witness under this subdivision deems that the hourly or daily fee of that expert for providing testimony is unreasonable, that party may move for an order setting the compensation of that expert. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall also be given to the expert.

The court shall set the fee of the expert for providing testimony if it determines that the fee demanded by that expert is unreasonable.

(d) In the event the proceeding at which the expert witness has been notified his or her attendance is required is continued or canceled in advance of the time for which it is scheduled, such witness shall be notified of the continuance or cancellation by the party requiring his or her attendance by the quickest and most reliable means of giving notice under the circumstances. In the event such party fails to give notice as required by this subdivision, then the expert witness shall be entitled to receive the compensation specified in subdivision (a) of this section, notwithstanding his or her failure to give any testimony.

(e) An express contract entered into between a person and the party requesting or requiring the person to testify, relating to compensation, shall be enforceable and shall prevail over the provisions of this section.

(f) The deposition of an expert witness is governed by Section 2034 of the Code of Civil Procedure.

SEC. 5. Section 2 of this bill incorporates amendments to Section 2034 of the Code of Civil Procedure proposed by both this bill and Senate Bill 247. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 2034 of the Code of Civil Procedure, and (3) this bill is enacted after Senate Bill 247, in which case Section 1 of this bill shall not become operative.

SEC. 6. Section 4 of this bill incorporates amendments to Section 68092.5 of the Government Code proposed by both this bill and Senate Bill 247. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 68092.5 of the Government Code, and (3) this bill is enacted after Senate Bill 247, in which case Section 3 of this bill shall not become operative.

CHAPTER 1393

An act to amend Sections 4970, 9701, 9705, 9756, and 9757 of, to add Sections 5062 and 5528 to, and to repeal Section 9757.5 of, the Business and Professions Code, relating to business and professions, and making an appropriation therefor.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 4970 of the Business and Professions Code is amended to read:

4970. The amount of fees prescribed for certified acupuncturists shall be those set forth in this section unless a lower fee is fixed by the committee in accordance with Section 4972:

(a) The application fee shall be seventy-five dollars ($75).

(b) The examination and reexamination fees shall be two hundred dollars ($200).

(c) The initial certification fee shall be three hundred twenty-five dollars ($325), except that if the certificate will expire less than one year after its issuance, then the initial certification fee shall be an amount equal to 50 percent of the initial certification fee.

(d) The renewal fee shall be three hundred twenty-five dollars ($325) and in the event a lower fee is fixed by the committee, shall be an amount sufficient to support the functions of the board and committee in the administration of this chapter. The renewal fee shall be assessed on an annual basis until January 1, 1996, and on and after that date the committee shall assess the renewal fee biennially.

(e) The delinquency fee is twenty-five dollars ($25).

(f) The application fee for the approval of a school or college under Section 4939 shall be three thousand dollars ($3,000).

(g) The duplicate wall certificate fee is an amount equal to the cost to the committee for the issuance of the duplicate certificate.

(h) The duplicate renewal receipt fee is ten dollars ($10).

(i) The endorsement fee is ten dollars ($10).

(j) The fee for a duplicate certificate for an additional office location as required under Section 4961 shall be fifteen dollars ($15).

SEC. 1.3. Section 5062 is added to the Business and Professions

Code, to read:

5062. A licensee shall issue a report which conforms to professional standards upon completion of a compilation, review or audit of financial statements.

SEC. 1.5. Section 5528 is added to the Business and Professions Code, to read:

5528. (a) The board may select and contract with necessary architect consultants who are licensed architects to assist it in its enforcement program on an intermittent basis.

(b) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any consultant under contract with the board shall be considered a public employee.

SEC. 2. Section 9701 of the Business and Professions Code is amended to read:

9701. Application for license as a cemetery salesperson shall be made in writing on the form prescribed by the board and filed at the principal office of the board. The application shall be signed by the applicant, and shall be accompanied by the cemetery salesperson's license fee.

SEC. 3. Section 9705 of the Business and Professions Code is amended to read:

9705. Upon receipt of the application and fee specified in Section 9701, the board shall issue, without examination, to any person who otherwise qualifies, a temporary salesperson's license, good for a period of three months from the date of issuance, irrespective of the fact that the fiscal year may terminate within such three months. An applicant shall not be entitled to more than one temporary license without examination.

SEC. 4. Section 9756 of the Business and Professions Code is amended to read:

9756. The cemetery salesman's license fee shall be fixed by the board at not more than thirty dollars ($30).

SEC. 5. Section 9757 of the Business and Professions Code is amended to read:

9757. A cemetery salesperson's license fee is payable on each filing of an application for a cemetery salesperson's license.

If the applicant fails the required written examination, he may be permitted to take another examination upon the filing of an application for reexamination and the payment of a reexamination fee which shall be fixed by the board at not more than fifteen dollars ($15).

SEC. 6. Section 9757.5 of the Business and Professions Code is repealed.

CHAPTER 1394

An act to add and repeal Chapter 5.5 (commencing with Section 16550) of Part 4 of Division 9 of the Welfare and Institutions Code, relating to children.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that eligible families of children with developmental disabilities currently receive respite care services under Section 4418.6 of the Welfare and Institutions Code. However, these services are not readily available to families of children with other disabilities or who for any reason do not qualify under those provisions.

(b) It is therefore the intent of the Legislature to establish a pilot project in the County of Los Angeles to provide respite care services to eligible families of special needs children who would not otherwise qualify for existing services.

SEC. 2. Chapter 5.5 (commencing with Section 16550) is added to Part 4 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 5.5. LOS ANGELES COUNTY SPECIAL CARE RESPITE PILOT PROJECT

16550. (a) The Child Development Division within the State Department of Education shall establish a two-year pilot project, to be known as the Special Care Respite Pilot Project, in the County of Los Angeles, for the purpose of providing respite care services to at least 100 families of special needs children.

(b) The pilot project shall utilize and, when appropriate, expand upon existing resources within the county, such as resource and referral systems, directories of families and providers, and parent cooperative organizations.

(c) Respite care services shall be made available through this project to families with one or more special needs children. Each family may receive respite care services for all children in the family for a maximum of 16 hours per child per month.

16550.05. For the purposes of this chapter, "special needs children" includes, but is not limited to, any child, 12 years old or younger, who is not a regional center client pursuant to Section 4418.5 and who is any of the following:

(a) A child with an orthopedic handicap, such as an amputation, a chronic disease of the bone, or other condition that restricts mobility or independence.

(b) A child at risk of a visual impairment due to glaucoma, retinopathy of prematurity, cataracts, albinism, or other disorder.

(c) A child who is partially sighted and has less than 20/70 vision in the better eye, with correction.

(d) A child who is legally blind who has less than 20/200 vision in the better eye, with correction, or who has a field of vision of 20 degrees or less in the better eye.

(e) A deaf child or a hearing impaired child with a significant hearing loss that makes special adaptations necessary.

(f) A child with a chronic medical condition, such as muscular dystrophy, leukemia, or cystic fibrosis.

(g) A child who has been diagnosed with a learning disability. This may include, but is not limited to, a child with a perceptual handicap, specific dyslexia, or sensory impairment.

(h) A child who has been diagnosed as emotionally disturbed. This may include, but is not limited to, a child with a severe conduct disorder or a personality disorder.

(i) An infant diagnosed at birth as drug or alcohol affected, or both, with a physical or emotional disorder.

(j) A child that is not currently receiving respite care services through any other state-funded program or agency.

16550.10. The division shall evaluate the pilot project and shall, through the normal budget hearing process, report to the Legislature on the success of the project with respect to all of the following factors:

(a) Meeting the goal of serving 100 families with a special needs child.

(b) Reducing the incidence of out-of-home placement of children with special needs.

(c) Providing outreach and identifying unmet needs.

(d) Determining to what extent special needs children are integrated into programs for children without disabilities.

16550.15. If the combined income of the parents of a child which receives services under this chapter exceeds 150 percent of the federal proverty level, the parents of the child shall pay a share of the cost of providing those services, according to a sliding scale determined by the Child Development Division of the State Department of Education.

16550.20. This chapter shall become inoperative on July 1, 1993, and, as of January 1, 1994, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1994, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. The Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution due to the unique circumstances concerning respite care programs in the County of Los Angeles.

SEC. 4. It is the intent of the Legislature to fund the provisions of this act through the Budget Act.

CHAPTER 1395

An act to amend Section 60608 of the Education Code, relating to health-related physical fitness testing.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 60608 of the Education Code is amended to read:

60608. Commencing with the 1990–91 school year, during either the month of March, April, or May, the governing board of each school district maintaining any of grades five, seven, or nine shall administer to each pupil in those grades health-related physical fitness test components designated by the Superintendent of Public Instruction.

Any pupil with exceptional needs or any other pupil who is unable to complete any of the test components, as directed, may be given an alternative for those components as his or her condition will permit.

Each school district shall submit to its governing board and the State Department of Education the results of its health-related physical fitness testing by June 4 of each year.

The State Department of Education shall compile the results of the annual testing and submit a report by January 1 of each year to the appropriate policy committee of each house of the Legislature for purposes of comparing the performance of California pupils to national norms. The department shall submit the report to the governing board of each school district by November 15 of each year.

This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date. If that date is not deleted or extended, then, on or after January 1, 1997, pursuant to Section 9611 of the Government Code, Section 60608 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 2. It is the intent of the Legislature that funding of this program, as established in Section 60608 of the Education Code, shall be continued at the same level of seven hundred thousand dollars ($700,000) each year through the regular budgetary process. Funds appropriated for this purpose shall be allocated by the Superintendent of Public Instruction to local education agencies. It is further the intent of the Legislature that these funds be applied toward the minimum funding requirements for school districts imposed by Section 8 of Article XVI of the California Constitution.

SEC. 3. No reimbursement shall be made from the State

Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1396

An act to amend Sections 13700 and 13703 of the Welfare and Institutions Code, relating to children.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 13700 of the Welfare and Institutions Code is amended to read:

13700. The Legislature finds and declares all of the following:

(a) There are homeless minors living on the streets of major urban centers in this state without adequate food, shelter, health care or financial support.

(b) Many of these homeless youth in these urban centers come from out-of-city or out-of-county locations.

(c) The homeless child, in many instances, has a history of physical or sexual abuse at home, and of having been rejected or forced out of the parental home.

(d) While living on the streets, these youth fall prey to drug abuse, prostitution, and other illegal activities.

(e) Local public agencies are unable to provide these youth with an adequate level or range of remedial services.

(f) These homeless minors are urgently in need of specialized services to locate them, to assist them with their immediate survival needs, and to address their long-term need to reunite with their parents or find a suitable home.

(g) Two homeless youth emergency service pilot programs, one in the City of Los Angeles, and one in the City and County of San Francisco, have demonstrated the need for ongoing programs to meet the needs of homeless minors and the effectiveness of these programs in meeting these needs.

The purpose of this chapter is therefore to maintain one homeless youth emergency project in the County of Los Angeles and one in the City and County of San Francisco, where the problem is most

acute, and to the extent funds are appropriated in the Budget Act of 1991, to establish additional homeless youth emergency service pilot projects pursuant to the provisions of this chapter. It is the further purpose of this chapter to examine the condition of homeless youth in major urban areas of this state with populations of 500,000 or more, as well as other urban, suburban, and rural areas, and develop a profile of homeless youth in terms of background and available services, in order to locate these youth, to provide for their emergency survival needs, and to assist them in reunification with their parents or in finding a suitable home.

SEC. 2. Section 13703 of the Welfare and Institutions Code is amended to read:

13703. (a) One homeless youth emergency service project shall be established in the County of Los Angeles and one shall be established in the City and County of San Francisco. One homeless youth emergency service project shall also be established in the County of San Diego and one shall be established in the County of Santa Clara. Each project may have one central location or may have more than one location in the service area in order to serve effectively the area population of homeless youth. Each project shall be operated by an agency in accordance with the grant award agreement with the office.

(b) The office shall prepare and disseminate a request for proposals for grantees under this chapter by February 15, 1986. The office shall enter into grant award agreements, and the operation of pilot projects shall begin, not later than June 1, 1986. With respect to projects to be established in the County of San Diego and the County of Santa Clara, the office shall prepare and disseminate a request for proposals for grantees under this chapter by March 31, 1992. The office shall enter into grant award agreements and the operation of these projects shall begin not later than July 1, 1992.

(c) An agency eligible to apply for funds under this chapter and to operate a homeless youth emergency service project shall be a private, nonprofit agency with a demonstrated record of success in the delivery of services to homeless youth. The agency selected for each project shall demonstrate the ability to provide each of the services described in Section 13701, either directly or under subcontract with a competent provider. Preference shall be given to agencies that demonstrate a history of coordination with other public and private agencies in the service region that provide services to homeless youth. Preference shall also be given to agencies that will involve a network of youth-serving agencies in the delivery of services to homeless youth under this chapter.

CHAPTER 1397

An act to amend Section 120050.2 of, and to add Section 120109 to, the Public Utilities Code, relating to transit.

[Approved by Governor September 26, 1990. Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 120050.2 of the Public Utilities Code is amended to read:

120050.2. The board consists of 15 members, except as specified in subdivision (d), selected as follows:

(a) One member of the County of San Diego Board of Supervisors, appointed by the board of supervisors.

(b) Four members of the City Council of the City of San Diego, one of whom may be the mayor, appointed by the city council.

(c) One member of each city council appointed individually by the City Councils of the Cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, and Santee.

(d) One person, a resident of San Diego County, elected by a two-thirds vote of the board, a quorum being present, who shall serve as chairperson of the board. The chairperson shall serve for a term of four years, except that he or she is subject to removal at any time by a two-thirds vote of the board, a quorum being present. If the person elected chairperson is also a member of the board, the membership of the board is reduced to 14 and the appointing power may not fill the vacancy created by the election of that member as chairperson as long as that member remains chairperson and, if removed as chairperson, that person shall resume the position on the board he or she vacated upon election as chairperson. Section 120102.5 does not apply to any vote taken under this subdivision.

SEC. 2. Section 120109 is added to the Public Utilities Code, to read:

120109. (a) The clerk of the board shall cause a proposed ordinance or proposed amendment to an ordinance, and any ordinance adopted by the board, to be published at least once, in a newspaper of general circulation published and circulated in the board's area of jurisdiction.

(b) The publication of an ordinance, as required by subdivision (a), may be satisfied by either of the following actions:

(1) The board may publish a summary of a proposed ordinance or proposed amendment to an ordinance. The summary shall be prepared by a person designated by the board. The summary shall be published and a certified copy of the full text of the proposed ordinance or proposed amendment shall be posted in the office of the clerk of the board at least five days prior to the board meeting

at which the proposed ordinance or amendment is to be adopted. Within 15 days after adoption of the ordinance or amendment, the board shall publish a summary of the ordinance or amendment with the names of those board members voting for and against the ordinance or amendment and the clerk shall post in the office of the clerk a certified copy of the full text of the adopted ordinance or amendment along with the names of those board members voting for and against the ordinance or amendment.

(2) If the person designated by the board determines that it is not feasible to prepare a fair and adequate summary of the proposed ordinance or amendment, and if the board so orders, a display advertisement of at least one-quarter of a page in a newspaper of general circulation in the board's area of jurisdiction shall be published at least five days prior to the board meeting at which the proposed ordinance or amendment is to be adopted. Within 15 days after adoption of the ordinance or amendment, a display advertisement of at least one-quarter of a page shall be published. The advertisement shall indicate the general nature of, and provide information regarding, the adopted ordinance or amendment, including information sufficient to enable the public to obtain copies of the complete text of the ordinance or amendment, and the names of those board members voting for and against the ordinance or amendment.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1398

An act to amend Section 113 of, and to add Article 5 (commencing with Section 26260) to Chapter 2 of Division 21 of, the Health and Safety Code, relating to health.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 113 of the Health and Safety Code is amended to read:

113. (a) The fees or charges for the issuance or renewal of any permit, license, registration, or document pursuant to Sections 403, 436.53, 527, 1017, 1616, 1676, 1677, 2202, 2805, 4083, 11887, 23013, 25628,

25049, 25059, 25064, 25079.3, 25094, 25694, 25696, 25697, 25812.8, 25816, 25817, 26262, 26506.2, 26593.2, 26593.4, 26688, 27010, 27011, 28126, 28410, 28411, and 28702 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section. This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Article 5 (commencing with Section 26260) is added to Chapter 2 of Division 21 of the Health and Safety Code, to read:

Article 5. Export Documents

26260. Any person who ships to another state or country a food, drug, or device manufactured or produced in this state may request the department to issue an export document to reference the shipment of the food, drug, or device or a person who manufactures or produces the food, drug, or device. The requesting person shall submit to the department all of the following:

(a) Each request for referencing the shipment of a food, drug, or device shall include all of the following information:

(1) Copies of any labels, labeling, and advertising affixed to or accompanying the food, drug, or device.

(2) If not clearly evident from the materials submitted pursuant to paragraph (1) both of the following:

(A) The name and place of business of the manufacturer or producer of the food, drug, or device.

(B) The identity of the food, drug, or device.

(3) The quantity of the food, drug, or device being shipped.

(4) The name of the state or country to which the food, drug, or device is being shipped.

(5) The date and means of shipment of the food, drug, or device.

(6) Additional statements the requesting person wishes to have incorporated into the export document.

(7) The name and telephone number of a person to whom the department may refer questions or requests for additional information about the request.

(b) Each request for referencing a person who manufactures or

produces foods, drugs, or devices shall include all of the following information:

(1) The name and place of business of the person and whether the products manufactured or produced are foods, drugs, or devices.

(2) The name of the state or country to which the export document will be sent.

(3) Additional statements the requesting person wishes to have incorporated into the export document.

(4) The name and telephone number of a person to whom the department may refer questions or requests for additional information about the request.

26261. Each export document issued by the department shall do all of the following:

(a) The reference of the shipment of a food, drug, or device in the export document shall do all of the following:

(1) Identify the name and place of business of the manufacturer or producer of the food, drug, or device.

(2) Identify the food, drug, or device being shipped and its quantity.

(3) Identify the state or country to which the food, drug, or device is being shipped.

(4) Identify the date and means of shipment of the food, drug, or device.

(5) Describe the department's authority over the food, drug, or device to be shipped and its manufacturer or producer, including, but not limited to, the expiration date of any applicable license, registration, certificate, or permit issued by the department.

(6) State that the department does not object to the sale of the food, drug, or devise in this state or the shipment of the food, drug, or devise to any other state or country.

(b) The reference of a person who manufactures or produces foods, drugs, or devices shall do all of the following:

(1) Identify the state or country to which the export document will be sent.

(2) Describe the department's authority over the person, including, but not limited to, the expiration date of any applicable license, registration, certificate, or permit issued by the department.

(3) State that the person is regularly engaged in the business of selling foods, drugs, or devices in this state.

(c) Each export document issued by the department may, in the department's sole discretion, include additional statements requested by the person who requested the export document.

(d) Each export document issued by the department shall be signed by the Chief of the Food and Drug Branch of the department, or his or her designee. The Chief or his or her designee may issue an export document prepared by the department or by the requesting person.

26262. (a) Each person requesting the department to issue an export document shall pay a nonreturnable fee of six dollars ($6) for

each separate request.

(b) Each of the following shall constitute a separate request:

(1) Reference to a specified shipment of a specified food, drug, or device to a specified state or country.

(2) Reference to a specified person who manufactures or produces foods, drugs, or devices, as specified, for shipment to a specified state or country.

(c) The fee amount shall be adjusted annually pursuant to Section 113.

(d) In no case shall the fees exceed the reasonable costs of the department in administering this article.

26263. (a) The department shall respond to each request to issue an export document within five working days of receipt by the department of the request.

(b) The department may refuse to issue an export document if it finds, or has probable cause to believe, any of the following:

(1) The food, drug, or device, or requesting person violated any provision of this division or any regulation adopted pursuant to this division.

(2) Any information required by this article to be submitted is incomplete or false.

(3) The fees required by this article have not been paid.

(4) The food, drug, or device is not manufactured or produced in this state.

(5) The food is a raw agricultural commodity or dairy product regulated by the Department of Food and Agriculture or a poultry or meat product regulated by the United States Department of Agriculture.

(c) If the department refuses to issue an export document, the department shall inform the requesting person in writing of the reasons for the refusal. The requesting person may request reconsideration by forwarding a written request to the Chief of the Division of Environmental Health of the department. The request for reconsideration must be postmarked or received by the department no later than 30 days after the date of the department's refusal and shall include a complete statement of all arguments and evidence which support the request for reconsideration. The Chief of the Division of Environmental Health shall notify the requestor of his or her decision within 30 days. The decision of the Chief of the Division of Environmental Health shall be final.

(d) It is the intent of the Legislature that the department issue an export document as soon as possible.

26264. It is unlawful for any person to knowingly supply the department with false material facts in a request for an export document or to falsely represent that the department has issued an export document.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district

will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1399

An act to add Sections 20017.986 and 22013.955 to the Government Code, and to amend Section 830.36 of the Penal Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor September 26, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 20017.986 is added to the Government Code, to read:

20017.986. "State peace officer/firefighter member" also includes bailiffs and security coordinators of the judicial branch who have been designated as peace officers in subdivision (b) of Section 830.36 of the Penal Code.

A member who is reclassified from state miscellaneous to state peace officer/firefighter pursuant to this section, may make an irrevocable election in writing to remain subject to the miscellaneous service retirement benefit and the normal rate of contribution by filing a notice of the election with the board within 90 days of notification by the board. A member who so elects shall be subject to the reduced benefit factors specified in Section 21251.13 only for service included in the federal system.

SEC. 2. Section 22013.955 is added to the Government Code, to read:

22013.955. "Policeman" as used in this part also includes persons employed in the classifications set forth in Section 20017.986, provided the designation is not contrary to any definition, ruling, or regulation relating to the term "policeman" issued by the federal agency for the purposes of Section 218(d) (5) (A) of the Social Security Act.

SEC. 3. Section 830.36 of the Penal Code is amended to read:

830.36. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of

that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) The Sergeant-at-Arms of each house of the Legislature, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(b) Bailiffs of the Supreme Court and of the courts of appeal, and coordinators of security for the judicial branch, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(c) Court service officer in a county of the second class and third class, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

CHAPTER 1400

An act to add Chapter 16 (commencing with Section 11500) to Part 7 of the Education Code, relating to education.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Chapter 16 (commencing with Section 11500) is added to Part 7 of the Education Code, to read:

CHAPTER 16. PROGRAMS TO ENCOURAGE PARENTAL INVOLVEMENT

11500. The Legislature hereby finds and declares all of the following:

(a) Despite a substantial increase in school funding over the last five years, a significant percentage of the school-aged population, particularly in large urban areas, is learning well below the statewide average and is making only marginal progress at best.

(b) Parental involvement and support in the education of children is an integral part of improving academic achievement. Educational research has established that properly constructed parent involvement programs can play an important and effective role in the participation of parents in their children's schools and in

raising pupil achievement levels.

(c) The federal government has recognized the critical role of parents in the educational process and now mandates parental involvement programs as a condition of eligibility for funds under the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100-297).

(d) The State Board of Education has also adopted a policy urging the creation of parent involvement programs in all schools.

(e) California's School Improvement Program has historically maintained parent involvement as one of its component parts.

(f) Research and experience have demonstrated that these programs succeed only when certain components are made part of the program.

11501. It is the intent of the Legislature in enacting this chapter to ensure that parent involvement programs are properly designed and implemented and to provide a focus and structure for these programs based on prior experience and research while maintaining sufficient local flexibility to design a program that best meets the needs of the local community.

11502. It is the purpose and goal of this chapter to do all of the following:

(a) To engage parents positively in their children's education by helping parents to develop skills to use at home that support their children's academic efforts at school and their children's development as responsible future members of our society.

(b) To inform parents that they can directly affect the success of their children's learning, by providing parents with techniques and strategies that they may utilize to improve their children's academic success and to assist their children in learning at home.

(c) To build consistent and effective communication between the home and the school so that parents may know when and how to assist their children in support of classroom learning activities.

(d) To train teachers and administrators to communicate effectively with parents.

(e) To integrate parent involvement programs, including compliance with this chapter, into the school's master plan for academic accountability.

11503. The governing board of each school district shall establish a parent involvement program for each school in the district that receives funds under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100-290). That program shall contain at least the following elements:

(a) Procedures to ensure that parents are consulted and participate in the planning, design, implementation, and evaluation of the program.

(b) Regular and periodic programs throughout the school year that provide for training, instruction, and information on all of the

following:

(1) Parental ability to directly affect the success of their children's learning through the support they give their children at home and at school.

(2) Home activities, strategies, and materials that can be used to assist and enhance the learning of children both at home and at school.

(3) Parenting skills that assist parents in understanding the development needs of their children and in understanding how to provide positive discipline for, and build healthy relationships with, their children.

(4) Parental ability to develop consistent and effective communications between the school and the parents concerning the progress of the children in school and concerning school programs.

(c) An annual statement identifying specific objectives of the program.

(d) An annual review and assessment of the program's progress in meeting those objectives. Parents shall be made aware of the existence of this review and assessment through regular school communications mechanisms and shall be given a copy upon the parent's request.

11504. The governing board of each school district shall adopt a policy on parent involvement, consistent with the purposes and goals set forth in Section 11502, for each school not governed by Section 11503.

11505. To the extent permitted by federal law, a school district may contract with nonprofit organizations and agencies experienced in administering parent involvement programs to design or implement, or design and implement, a school's parent involvement program.

11506. Schools that receive federal funds under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P. L. 100-297), and receive funds for school improvement plans pursuant to Chapter 6 (commencing with Section 52000) of Part 28 or economic impact aid pursuant to Article 2 (commencing with Section 54020) of Chapter 1 of Part 29, may receive funds for school improvement plans pursuant to Chapter 6 (commencing with Section 52000) of Part 28 or economic impact aid pursuant to Article 2 (commencing with Section 54020) of Chapter 1 of Part 29 only if they comply with this chapter.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000),

reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1401

An act to add Article 1.7 (commencing with Section 230) to Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, relating to insurance.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Article 1.7 (commencing with Section 230) is added to Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, to read:

Article 1.7. Catastrophic Health Insurance

230. The Legislature finds and declares as follows:

(a) A catastrophic illness or injury may financially devastate an individual or the family of that individual because of extraordinary medical expenses. It is vitally necessary to the public health and welfare of the State of California that:

(1) Its residents not be burdened with those financial costs. Most health insurance policies contain a monetary limitation on the amount of money that can be expended on a particular illness or individual, leaving any balance to be paid by the patient. The state has enacted this act to promote the availability of additional insurance to help pay extensive medical costs.

(2) The state government not be financially burdened by residents who may become indigent due to these catastrophic health costs.

(b) It is the intent of the Legislature in enacting this article to institute a program to inform state residents of the need for catastrophic health insurance, and to make this insurance available to residents through an independent insurer at no cost or liability to the state.

231. As used in this article:

(a) "Catastrophic health insurance" means a supplementary insurance contract that indemnifies a California resident for medical expenses, including at least the costs of the basic health care services that result from an illness, injury, or disease, and that are greater than fifty thousand dollars ($50,000).

(b) "Resident" means any individual who lives in California for at least 90 consecutive days.

(c) "Insurer" as used in this article includes a disability insurer which covers hospital, medical, or surgical expenses, and a nonprofit hospital service plan.

(d) "Basic health care services" includes, but is not limited to, the following:

(1) Inpatient hospital treatment, including room and board, general nursing services, diagnostic tests, supplies, and other medically necessary services.

(2) Outpatient services for surgery, presurgical diagnostic tests, emergency care, and chemotherapy.

(3) Surgery and anesthesia.

(4) Hospital and office visits and consultations.

(5) X-rays and laboratory tests; allergy tests, injections, and sera.

(6) Maternity care for the subscriber or enrolled spouse.

(7) Psychotherapy.

(8) Chemotherapy and radiation therapy.

(9) Physical, speech, occupational and respiratory therapies.

(10) Prescription drugs.

(11) Prostheses and durable medical equipment, such as artificial limbs, hospital beds, and wheelchairs.

(12) Cardiac rehabilitation program.

(13) Local ambulance service.

(14) Alcohol and drug abuse rehabilitation.

(15) Rehabilitative care.

(16) Outpatient skilled nursing care (up to two hours per day for up to 50 days per calendar year).

(17) Home health care and hospice services provided by an approved home health agency or hospice agency.

232. The director shall, in consultation with, and approval of the Department of Insurance, do all of the following:

(a) Contract with an insurer or insurers to provide any resident catastrophic health insurance.

(b) Inform residents of the availability of catastrophic health insurance.

(c) Provide oversight for all contract obligations of the insurer.

(d) Approve all advertising and marketing materials used by an insurer in connection with catastrophic health insurance provided under this article in order to ensure accuracy and fairness. The advertising standards used shall be those set out in Section 1360 of the Health and Safety Code.

(e) Determine the cost of the oversight function and make provisions to cover all administrative costs.

233. (a) A contract provided for by this article shall not be required to cover a preexisting medical condition of the resident during the first 10 months the resident is covered by catastrophic health insurance provided under this article. Charges for a preexisting condition shall not apply toward the deductible during

the first 10 months of coverage. Charges for other conditions during that initial period shall apply toward the deductible.

(b) The contract shall also prohibit the insurer from discriminating against prospective insureds in their underwriting practices on the basis of demographic factors, such as age, or preexisting medical conditions.

234. The state is not liable in any way for any claims arising out of an arrangement for insurance established under this article. The insurer shall bear the cost of all claims, and shall indemnify the state against all claims and the cost of defending against all claims in connection with an arrangement for catastrophic health insurance established under this article.

235. The director shall enter into contracts pursuant to subdivision (a) of Section 232 only with insurers that meet all of the following criteria, as determined by the director:

(a) The insurer shall be actuarially sound.

(b) The insurer shall be fully self-supported by its policy premiums or charges and investments.

(c) The insurer shall use advertising which is accurate.

236. (a) The term of any contract entered into pursuant to subdivision (a) of Section 232 shall be determined by the director, but shall not exceed three years.

(b) The contract shall contain a provision authorizing the director to terminate the contract upon giving 60 days' written notice to the insurer of any of the following causes for termination:

(1) The department has determined that management practices of the insurer or the current financial condition of the insurer interferes with the efficient and timely payment of catastrophic health insurance benefits.

(2) Continuing failure of the insurer to timely pay the benefits of its policies of catastrophic health insurance or provide catastrophic health insurance services in accordance with the contract.

(3) Other continuing unsatisfactory performance by the insurer under the contract, based upon complaints received from insureds or other sources, if the insurer has failed to take reasonable, effective, and prompt actions to resolve the complaints.

(c) The contract shall contain a provision authorizing the director to terminate the contract without cause upon any annual anniversary date of the contract by giving at least 60 days' notice to the insurer.

(d) The director may give up to 120 days' notice to terminate if it is determined to be in the best interest of plan participants.

(e) The director shall annually certify that participating providers meet the conditions of the program. In carrying out this requirement, the State Director of Health Services shall consult with the Department of Insurance to obtain any audits performed by those agencies which may be used in evaluating the performance of each provider.

237. Premiums or charges paid for catastrophic health insurance provided pursuant to this article shall include an increment to defray

the reasonable administrative costs of the department in administering this article, including the costs of the advisory committee created pursuant to Section 238, which shall be transmitted by insurers to the department as provided in the contract.

238. For the purpose of assisting the department in the development of contracts and providing for the effective monitoring of insurer performance under this article, there is hereby created an advisory committee which shall remain in existence only until January 1, 1993. It shall be comprised of two representatives of the health insurance industry, two physicians and surgeons with familiarity as to catastrophic health care needs, and two public members. Two members of the advisory committee shall be appointed by the Governor, two members shall be appointed by the Speaker of the Assembly, and two members shall be appointed by the Senate Committee on Rules.

The members of the advisory committee shall be entitled to reimbursement for necessary travel and other expenses incurred in the performance of their duties.

This section shall remain in effect only until January 1, 1993, and as of that date is repealed.

CHAPTER 1402

An act to add Section 1365.5 to the Health and Safety Code, and to amend Section 10140 of, and to add Section 11512.193 to, the Insurance Code, relating to health coverage.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 1365.5 is added to the Health and Safety Code, to read:

1365.5. (a) No health care service plan or specialized health care service plan shall refuse to enter into any contract or shall cancel or decline to renew or reinstate any contract because of the race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age of any contracting party, prospective contracting party, or person reasonably expected to benefit from that contract as a subscriber, enrollee, member, or otherwise.

(b) The terms of any contract shall not be modified, and the benefits or coverage of any contract shall not be subject to any limitations, exceptions, exclusions, reductions, copayments, coinsurance, deductibles, reservations, or premium, price, or charge differentials, or other modifications because of the race, color, national origin, ancestry, religion, sex, marital status, sexual

orientation, or age of any contracting party, potential contracting party, or person reasonably expected to benefit from that contract as a subscriber, enrollee, member, or otherwise; except that premium, price, or charge differentials because of the sex or age of any individual when based on objective, valid, and up-to-date statistical and actuarial data are not prohibited. Nothing in this section shall be construed to permit a health care service plan to charge different premium rates to individual enrollees within the same group solely on the basis of the enrollee's sex.

(c) It shall be deemed a violation of subdivision (a) for any health care service plan to utilize marital status, living arrangements, occupation, gender, beneficiary designation, zip codes or other territorial classification, or any combination thereof for the purpose of establishing sexual orientation. Nothing in this section shall be construed to alter in any manner the existing law prohibiting health care service plans from conducting tests for the presence of human immunodeficiency virus or evidence thereof.

(d) This section shall not be construed to limit the authority of the commissioner to adopt or enforce regulations prohibiting discrimination because of sex, marital status, or sexual orientation.

SEC. 2. Section 10140 of the Insurance Code is amended to read:

10140. (a) No admitted insurer, licensed to issue life or disability insurance, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance, under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, national origin, ancestry, or sexual orientation. Race, color, religion, national origin, ancestry, or sexual orientation shall not, of itself, constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance.

(b) It shall be deemed a violation of subdivision (a) for any insurer to consider sexual orientation in its underwriting criteria or to utilize marital status, living arrangements, occupation, gender, beneficiary designation, zip codes or other territorial classification within this state, or any combination thereof for the purpose of establishing sexual orientation or determining whether to require a test for the presence of the human immunodeficiency virus or antibodies to that virus, where that testing is otherwise permitted by law. Nothing in this section shall be construed to alter, expand, or limit in any manner the existing law respecting the authority of insurers to conduct tests for the presence of human immunodeficiency virus or evidence thereof.

(c) Any insurer that knowingly violates this section shall for each violation be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court.

(d) This section shall not be construed to limit the authority of the commissioner to adopt regulations prohibiting discrimination

because of sex, marital status, or sexual orientation or to enforce these regulations, whether adopted before or on or after January 1, 1991.

SEC. 3. Section 11512.193 is added to the Insurance Code, to read:

11512.193. (a) No nonprofit hospital service plan issuing, providing, or administering an individual or group nonprofit hospital service plan contract shall refuse to cover, or refuse to continue to cover, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage because of race, color, religion, national origin, ancestry, or sexual orientation.

(b) It shall be deemed a violation of subdivision (a) for any plan to consider sexual orientation in its underwriting criteria or to utilize marital status, living arrangements, occupation, gender, beneficiary designation, zip codes or other territorial classification within this state, or any combination thereof, for the purpose of establishing sexual orientation or determining whether or not to require a test for the presence of the human immunodeficiency virus or antibodies to that virus, where that testing is otherwise permitted by law. Nothing in this section shall be construed to alter, expand, or limit in any manner the existing law respecting the authority of insurers to conduct tests for the presence of human immunodeficiency virus or evidence thereof.

(c) Any plan that knowingly violates this section shall, for each violation, be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court.

(d) This section does not limit the authority of the commissioner to adopt regulations prohibiting discrimination because of sex, marital status, or sexual orientation, or to enforce those regulations, whether adopted before, on, or after January 1, 1991.

CHAPTER 1403

An act to add Section 9882.14 to the Business and Professions Code, to amend Section 11837.1 of the Health and Safety Code, to add Section 1203.1bb to the Penal Code, and to amend Section 13352 of, to add Sections 13202.7 and 40000.65 to, and to add Article 4 (commencing with Section 23235) to Chapter 12 of Division 11 of, the Vehicle Code, relating to driving offenses, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) There is a need to reduce the incidence of drivers on the

highways and roads of this state who, because of their consumption of alcohol, pose a danger to the health and safety of other drivers.

(b) One method to deal with the problem of drinking drivers is to discourage the use of motor vehicles by persons who have consumed alcoholic beverages.

(c) The installation of an ignition interlock device may provide a means of deterring use of motor vehicles by persons who have consumed alcoholic beverages.

(d) Ignition interlock devices are designed to supplement other conditions of probation and punishment which prevent convicted drunk drivers from starting a motor vehicle while under the influence of alcohol.

(e) It is economically and technically feasible to have an ignition interlock device installed on a vehicle in such a manner that the vehicle will not start if the operator's blood-alcohol content is measurable by the operator blowing into the device.

SEC. 2. Section 9882.14 is added to the Business and Professions Code, to read:

9882.14. (a) The bureau shall cooperate with the Office of Traffic Safety and adopt standards for the installation of and designate stations for the installation of ignition interlock devices.

(b) The manufacturers of ignition interlock devices shall comply with standards established by the bureau for the installation of those ignition interlock devices.

(c) The bureau may charge manufacturers of certified interlock ignition devices a fee to recover the cost of monitoring installation standards.

SEC. 3. Section 11837.1 of the Health and Safety Code is amended to read:

11837.1. (a) In utilizing any program defined in subdivision (e) of Section 11837, the court may require periodic reports concerning the performance of each person referred to and participating in a program. The program shall provide the court, the Department of Motor Vehicles, and the person referred to and participating in a program, with an immediate report of any failure of the person to comply with the program's rules and policies.

(b) (1) If, at any time after entry into or while participating in a program, a participant who is referred to an 18-month program described in Section 23166 or 23186 of the Vehicle Code or a 30-month program described in Section 23171, 23176, or 23191 of the Vehicle Code, fails to comply with the rules and policies of the program, and that fact is reported, the Department of Motor Vehicles shall revoke or suspend the privilege of that person to operate a motor vehicle for the period prescribed by law in accordance with Section 13352.5 of the Vehicle Code, except as otherwise provided in this section. The Department of Motor Vehicles shall notify the person and the court of its intended action and shall inform the person of the opportunity to be reinstated in the program and to avoid suspension of the driving privilege.

(2) Notwithstanding paragraph (1), the Department of Motor Vehicles shall not suspend the driving privilege pursuant to paragraph (1) if the court, upon the petition of the person, determines that the person should be reinstated in the 18-month or 30-month program. The determination by the court shall be made within 45 days of the notice from the department of the intended action or such additional time, not to exceed an additional 45 days, for the determination as is required, ordered, and transmitted to the Department of Motor Vehicles by the court, which additional time is not caused by any action or failure to act by the person. Upon timely presentation by the person to the Department of Motor Vehicles of evidence satisfactory to the Department of Motor Vehicles that the court of jurisdiction has consented to the person's reinstatement in the program and that the person is currently participating in the program, the Department of Motor Vehicles shall continue in effect the restriction of the driving privilege prescribed by Section 13352.5 of the Vehicle Code unless the person has previously been reinstated in the program on two or more prior occasions, in which case the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352 of the Vehicle Code. If the court fails to grant the person's petition for reinstatement in the program, the court shall suspend the person's driving privilege until the time the person's driving privilege is suspended or revoked by the Department of Motor Vehicles pursuant to subdivision (d) of Section 13352.5 of the Vehicle Code.

(c) If, at any time after referral to or while participating in a program, a participant who is referred to an alcohol or drug education and counseling program pursuant to Section 23161 or 23181 of the Vehicle Code, to an 18-month program pursuant to Section 23166 or 23186 of the Vehicle Code, or to a 30-month program pursuant to Section 23171, 23176, or 23191 of the Vehicle Code, refuses, for any reason, to consent to a chemical test that he or she is required to submit to pursuant to Section 23157 of the Vehicle Code, his or her participation in the program shall be terminated and, the Department of Motor Vehicles shall immediately suspend or revoke his or her privilege to operate a motor vehicle for the period prescribed in Section 13352 of the Vehicle Code, according to the offense for which he or she was convicted immediately prior to referral to the program. The period of suspension or revocation shall be in addition to the period of suspension imposed by the Department of Motor Vehicles pursuant to Section 13353 of the Vehicle Code.

(d) If the department withdraws the license of a program, the department shall immediately notify the Department of Motor Vehicles of those persons who do not commence participation in a licensed program within 21 days from the date of the withdrawal of the license of the program in which the persons were previously participating. The Department of Motor Vehicles shall suspend or

revoke, for the period prescribed by law, the privilege to operate a motor vehicle of each of those persons referred to an 18-month program pursuant to Section 23166 or 23186 of the Vehicle Code or to a 30-month program pursuant to Section 23171, 23176, or 23191 of the Vehicle Code.

SEC. 4. Section 1203.1bb is added to the Penal Code, to read:

1203.1bb. (a) The reasonable cost of probation determined under subdivision (a) of Section 1203.1b shall include the cost of purchasing and installing an ignition interlock device pursuant to Section 23235 of the Vehicle Code. Any defendant subject to this section shall pay the manufacturer of the ignition interlock device directly for the cost of its purchase and installation, in accordance with the payment schedule ordered by the court. If practicable, the court shall order payment to be made to the manufacturer of the ignition interlock device within a six-month period.

This subdivision does not require any county to pay the costs of purchasing and installing any ignition interlock devices ordered pursuant to Section 23235 of the Vehicle Code. The Office of Traffic Safety shall consult with the presiding judge or his or her designee in each county to determine an appropriate means, if any, to provide for installation of ignition interlock devices in cases in which the defendant has no ability to pay.

SEC. 5. Section 13202.7 is added to the Vehicle Code, to read:

13202.7. The restrictions specified in Section 13202.5 for the violations specified in that section may include, but are not limited to, the installation and maintenance of a certified ignition interlock device pursuant to Article 4 (commencing with Section 23235) of Chapter 12 of Division 11. Any restriction is subject to the provisions of Section 13202.5 relating to restrictions.

SEC. 5.5. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke, or record the court-administered suspension or revocation of, the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. For purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23160, the privilege shall be suspended for a period of six months if the court orders the department to suspend the privilege, or if the court does not grant probation, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in

vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. If the person gives proof of ability to respond in damages as defined in Section 16430, the department shall issue the restricted license upon receipt of an abstract of record from the court pursuant to Section 1803 certifying that the court has granted probation to the person on conditions which include the condition specified in subdivision (b) of Section 23161.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23180, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of ability to respond in damages as defined in Section 16430.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23165, the privilege shall be suspended for 18 months. The privilege shall not be reinstated until the person gives proof of ability to respond in damages as defined in Section 16430.

(4) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23153 punishable under Section 23185, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages as defined in Section 16430.

(5) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23170, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person files proof of ability to respond in damages as defined in Section 16430 and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of an 18-month program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of an 18-month program or a 30-month program is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subject to the current underlying conviction, either of the following:

(i) A licensed 18-month program pursuant to Section 11837 of the Health and Safety Code.

(ii) The initial 18 months of a licensed 30-month program

pursuant to Section 11837 of the Health and Safety Code.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23235, an ignition interlock device.

(C) The person provides proof of responsibility to respond in damages as defined in Section 16430.

(D) The person has not applied for and received such an order in conjunction with the current underlying conviction or a prior conviction for violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23170 may also, at any time after sentencing, petition the court for referral to an 18-month program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(6) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23190, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages as defined in Section 16430 and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) (i) The person has satisfactorily completed, subject to the current underlying conviction, the initial 18 months of a licensed 30-month program pursuant to Section 11837 of the Health and Safety Code.

(ii) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program if applicable, and to have installed and maintained, as described in Section 23235, an ignition interlock device.

(iii) The person provides proof of responsibility to respond in damages as defined in Section 16430.

(iv) The person has not applied for and received such an order in conjunction with the current underlying conviction or a prior conviction for a violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(B) Any individual convicted of a violation of Section 23153 punishable under Section 23190 may also, at any time after sentencing, petition the court for referral to a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(7) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23175, the privilege shall be revoked for a period of four years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages as defined in Section 16430 and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of an 18-month program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of an 18-month program or a 30-month program is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subject to the current underlying conviction, the initial 18 months of a licensed 30-month program pursuant to Section 11837 of the Health and Safety Code.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23235, an ignition interlock device.

(C) The person provides proof of responsibility to respond in damages as defined in Section 16430.

(D) The person has not applied for and received such an order in conjunction with the current underlying conviction or a prior conviction for violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23175 may also, at any time after sentencing, petition the court for referral to an 18-month program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if and as ordered by the court.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if the court orders the department to suspend the privilege. The privilege shall not be reinstated until the person gives proof of ability to respond in damages as defined in Section 16430.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction.

(c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Dominion of Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and such a conviction of an offense which, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of such a conviction.

(e) Whenever the driving privilege is restricted, suspended, or revoked pursuant to this section, the department shall not issue a restricted driver's license or reinstate the driving privilege unless the person gives proof of ability to respond in damages as defined in Section 16430 and maintains that proof for three years. If, at any time during that three-year period, a person who is required to maintain that proof fails to maintain that proof, the department shall suspend that person's driving privilege until the proof of ability to respond in damages is again given to the department.

SEC. 6. Article 4 (commencing with Section 23235) is added to Chapter 12 of Division 11 of the Vehicle Code, to read:

Article 4. Ignition Interlock Device

23235. In addition to any other provisions of law, the court may require that any person who is convicted of a violation of Section 23152 or 23153, and who is granted probation, shall not operate a motor vehicle during the period of probation unless that vehicle is equipped with a functioning, certified ignition interlock device as provided in this article, and shall order that this requirement be noted on the driver's license of that person.

23236. (a) Notwithstanding any other requirements for the court to impose a minimum fine contained in Article 2 (commencing with Section 23152) and in order to implement this article, a court

may impose as a condition of probation for any person whose driving privilege is restricted pursuant to Section 23235 that the person pay a fine of not more than one thousand dollars ($1,000), unless the person is convicted of a violation of Section 23153, punishable under Section 23185 or 23190, in which case the court may impose as a condition of probation that the person pay a fine of not more than five thousand dollars ($5,000), which fine is in lieu of the fine prescribed in Article 2 (commencing with Section 23152). The court may consider in determining the amount of the fine to be imposed the cost to the person of installing the ignition interlock device, and may reduce the fine that would otherwise be imposed by an amount not to exceed the cost of the device.

(b) This section does not affect any other terms or conditions of probation required by Article 2 (commencing with Section 23152) other than those provisions prescribing minimum fines to be imposed as terms and conditions of probation.

23237. (a) No person shall knowingly rent, lease, or lend a motor vehicle to a person known to have had his or her driving privilege restricted under a condition of probation as provided in Section 23235, unless the vehicle is equipped with a functioning, certified ignition interlock device. Any person, whose driving privilege is restricted under a condition of probation as provided in Section 23235, shall notify any other person who rents, leases, or loans a motor vehicle to him or her of the driving restriction imposed under that section.

(b) Any person convicted of a violation of subdivision (a) shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

23238. (a) Subject to subdivision (d), the court shall order the installation of an ignition interlock device on any vehicle which the person subject to Section 23235 owns or operates.

(b) If the court imposes the use of an ignition interlock device as a condition of probation on a person whose driving privilege is not suspended or revoked, the court shall require the person to provide proof of compliance with subdivision (a) or (e) to the court or the probation officer within 30 days on a form prescribed pursuant to subdivision (i) of Section 23241 and shall require the person to surrender his or her driver's license to the court until that proof is submitted and verified by the court or probation officer. If the person fails to provide proof of installation within that period, absent a finding by the court of good cause for that failure which is entered in the court record, the court shall revoke or terminate the person's probation as provided by Section 23207.

(c) If the court imposes the use of an ignition interlock device as a term of probation on a person whose driving privilege is suspended or revoked for a period of less than three years, the Department of Motor Vehicles shall require proof of compliance with subdivision (a) or (e) before reinstatement of the person's driving privilege.

(d) If the person subject to Section 23235 claims inability to pay for the installation ordered pursuant to subdivision (a), the court shall determine the person's ability to pay, pursuant to Sections 1203.1b and 1203.1bb of the Penal Code. The person shall provide proof of installation as provided in subdivision (b) or (c).

(e) The person whose driving privilege is restricted pursuant to Section 23235 shall report to the court or the probation officer at least once annually, and more frequently as the court may order, on the operation of each interlocking ignition device in the person's vehicle or vehicles.

(f) The court shall immediately suspend the privilege to operate a motor vehicle of, and issue a bench warrant for, any person who fails to comply with any notice from the court or probation officer to comply with subdivision (a) or (e) or who three or more times fails to comply with any requirement for the maintenance or calibration of the ignition interlock device.

23239. The court may require the use of an approved ignition interlock device for the period of probation if the person is permitted to operate a motor vehicle, whether the privilege to operate a motor vehicle is restricted or not, as determined by the court.

23240. The court shall include on the abstract of conviction or violation submitted to the Department of Motor Vehicles under Section 1803 or 1816, the requirement for, and the period of, the use of a certified ignition interlock device under this article. The records of the Department of Motor Vehicles shall contain a record reflecting mandatory use of the device.

23241. (a) As used in this section, "office" means the Office of Traffic Safety.

(b) The office shall certify or cause to be certified ignition interlock devices required by this article and publish a list of approved devices.

(c) The office shall adopt guidelines for the proper use of the ignition interlock devices in full compliance with this article.

(d) The office shall utilize information from an independent agency to certify ignition interlock devices on or off the premises of the manufacturer in accordance with the guidelines. The cost of certification shall be borne by the manufacturers of interlock ignition devices. In certifying the devices, those which do not impede the safe operation of the vehicle, and which have the fewest opportunities to be bypassed so as to render the provisions of this article ineffective, shall be certified.

(e) No model of ignition interlock device shall be certified unless it meets the accuracy requirements specified by the guidelines of the office.

(f) Before certifying any device, the office shall consult with the National Highway Traffic Safety Administration regarding the use of ignition interlock devices.

(g) The office shall develop and disseminate information concerning the devices and their potential value as a

countermeasure to driving under the influence of alcohol. This information shall be included in training seminars for municipal court judges throughout the state.

(h) The office shall establish standard forms and procedures for documenting decisions and compliance and communicating results to relevant agencies. These forms shall include all of the following:

(1) An "Order to Install," to be issued to the probationer at the time of sentencing. This shall include the conditions of the sentence and be accompanied by information concerning approved installation locations in the jurisdiction. Copies shall be provided for the court, the probationer, the Department of Motor Vehicles, and the probation department, or other monitoring agency.

(2) A "Verification of Installation" form to be returned to the court by the probationer within a specified time period. Copies shall be provided for the court, the probationer, the manufacturer, and the probation department or other monitoring agency.

(3) Verification of calibration, and compliance, forms and procedures to ensure continued use of the interlock during the probation period and to ensure compliance with maintenance requirements. The maintenance period shall be standardized at 60 days to maximize monitoring checks for equipment tampering.

23242. In addition to any other provisions of law, upon a violation of a condition of probation imposed pursuant to Section 23235, the court shall order the probation revoked and notify the Department of Motor Vehicles, which shall revoke the person's driving privilege for one year from the date of probation revocation. If that person subsequently violates that condition of probation during the same period of required use of an approved ignition interlock device, upon notification by the court, the Department of Motor Vehicles shall revoke the person's driving privilege for five years from the date of probation revocation.

23243. (a) Notwithstanding Sections 23235 and 23238, if a person is required to operate a motor vehicle in the course and scope of his or her employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified by the person that the person's driving privilege has been restricted under this article and if the person has proof of that notification in his or her possession or the notice, or a facsimile copy thereof, is with the vehicle.

(b) A motor vehicle owned by a business entity which business entity is all or partly owned or controlled by a person otherwise subject to this article, is not a motor vehicle owned by the employer subject to the exemption in subdivision (a).

23244. (a) It is unlawful for any person whose driving privilege is restricted pursuant to Section 23235 to request or solicit any other person to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing the person so restricted with an operable motor vehicle.

(b) It is unlawful to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is restricted pursuant to Section 23235.

(c) It is unlawful to tamper with, or circumvent the operation of, an ignition interlock device.

23245. Except as provided in this article, this article does not alter the authority of judges under existing law to establish reasonable conditions of probation.

SEC. 7. Section 40000.15 of the Vehicle Code, as amended by Chapter 33 of the Statutes of 1990, is amended to read:

40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Sections 23103 and 23104, relating to reckless driving.

Section 23109, relating to speed contests or exhibitions.

Section 23110, subdivision (a), relating to throwing at vehicles.

Section 23152, relating to driving under the influence.

Subdivision (b) of Section 23222, relating to possession of marijuana.

Sections 23237 and 23244, relating to ignition interlock devices.

Section 23253, relating to officers on vehicular crossings.

Section 23332, relating to trespassing.

Section 27150.1, relating to sale of exhaust systems.

Section 27362, relating to child passenger seat restraints.

Section 28050, relating to true mileage driven.

Section 28050.5, relating to nonfunctional odometers.

Section 28051, relating to resetting odometer.

Section 28051.5, relating to device to reset odometer.

SEC. 8. If any provision of this act or its application to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to restore, at the earliest possible time, the ignition interlock device program, which has a valuable deterrent effect and

will help protect motorists and others from drinking drivers, it is necessary that this act take effect immediately.

CHAPTER 1404

An act relating to developer fees.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. (a) Any person who meets all of the following conditions shall be entitled to a refund in accordance with subdivision (b):

(1) The person paid a fee, charge, dedication, or other requirement that was imposed by a school district against residential construction, other than new construction, in accordance with Section 53080 of the Government Code as that section read between March 14, 1988, and September 30, 1989, inclusive.

(2) The actual cost of labor, materials, and professional services incurred by the person in completing the residential construction against which the fee, charge, dedication, or other requirement was imposed was twenty thousand dollars ($20,000) or less.

(3) No later than April 1, 1991, the person submits, to the school district that received the payment described in paragraph (1), a written request for a refund of that payment, together with documentation that enables the governing board of the school district to ascertain the amount of that payment and the amount of the cost described in paragraph (2).

(b) No later than June 1, 1991, each school district governing board that receives from any person a refund request that satisfies the conditions contained in paragraphs (1), (2), and (3) of subdivision (a) shall return to that person the payment made to the school district by that person.

(c) This section shall apply only to single-family homes when the fee was paid by the owner-builder.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the

California Constitution.

CHAPTER 1405

An act making an appropriation for the payment of claims against the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 28, 1990.]

I am reducing the appropriation contained in Section 1 of Assembly Bill No 2571 from $1,465,878.14 to $1,462,245 14.

Specifically, I am reducing Item 5240-001-001 (a) by $3,663 for the claim for Paul D Palmer While there may be some merit of equity to the issues addressed in this case, these issues could, nonetheless, be applied to a large number of employees in similar circumstances throughout the state government; thus, compensation of this type would more appropriately be handled through collective bargaining As a result, I am vetoing this claim because of the precedent payment of the claim would establish and the potential impact it could have on the state's limited resources

With this reduction, I approve Assembly Bill No 2571.

GEORGE DEUKMEJIAN, Governor

The people of the State of California do enact as follows:

SECTION 1. The sum of one million four hundred sixty-five thousand eight hundred seventy-eight dollars and fourteen cents ($1,465,878.14) is hereby appropriated to the Secretary of the State Board of Control to pay claims accepted by the State Board of Control in accordance with the following schedule:

Total for fund: Bank and Corporation Tax Fund	$119,759.09
Total for fund: Disability Fund	$1,155.00
Total for fund: Federal Trust Fund	$207.90
Total for fund: General Fund	$39,679.13
Total for fund: Item 0530-001-001(A), Budget Act of 1990	$50.00
Total for fund: Item 0690-001-001(A), Budget Act of 1990	$493.00
Total for fund: Item 0690-001-001(B), Budget Act of 1990	$12,580.76
Total for fund: Item 0820-001-001(A), Budget Act of 1990	$8.85
Total for fund: Item 0820-001-001(E), Budget Act of 1990	$3,441.88
Total for fund: Item 0820-001-001(G), Budget Act of 1990	$4,207.26
Total for fund: Item 0840-001-001(A), Budget Act of 1990	$1,376.29
Total for fund: Item 0860-001-001(A), Budget Act of 1990	$576.40

Total for fund: Item 0860-001-001(B), Budget Act of 1990 ..... $346.00
Total for fund: Item 0890-001-001(B), Budget Act of 1990 ..... $156.85
Total for fund: Item 0950-001-001(B), Budget Act of 1990 ..... $121,206.50
Total for fund: Item 1100-001-001(B), Budget Act of 1990 ..... $10,474.39
Total for fund: Item 1230-020-735(A), Budget Act of 1990 ..... $212.02
Total for fund: Item 1240-022-738(A), Budget Act of 1990 ..... $1,919.03
Total for fund: Item 1640-086-001(A), Budget Act of 1990 ..... $854.09
Total for fund: Item 1655-090-702(A), Budget Act of 1990 ..... $5,992.17
Total for fund: Item 1655-090-702(B), Budget Act of 1990 ..... $1,358.11
Total for fund: Item 1700-001-001(A), Budget Act of 1990 ..... $1,920.12
Total for fund: Item 1710-001-001(B), Budget Act of 1990 ..... $25.00
Total for fund: Item 1730-001-001(A), Budget Act of 1990 ..... $90.16
Total for fund: Item 1730-001-001(B), Budget Act of 1990 ..... $64.24
Total for fund: Item 1760-001-666(A), Budget Act of 1990 ..... $1,950.54
Total for fund: Item 1760-001-666(B), Budget Act of 1990 ..... $53,562.99
Total for fund: Item 1970-011-001(A), Budget Act of 1990 ..... $1,003.73
Total for fund: Item 2320-001-001(A), Budget Act of 1990 ..... $59.00
Total for fund: Item 2660-001-042(B), Budget Act of 1990 ..... $85,716.34
Total for fund: Item 2720-001-044(A), Budget Act of 1990 ..... $13,141.82
Total for fund: Item 2740-001-044(A), Budget Act of 1990 ..... $2,506.63
Total for fund: Item 2780-001-683(A), Budget Act of 1990 ..... $269.05
Total for fund: Item 3340-001-001(A), Budget Act of 1990 ..... $1,503.64
Total for fund: Item 3540-001-001(A), Budget Act of 1990 ..... $35.75
Total for fund: Item 3540-001-001(B), Budget Act of 1990 ..... $700.50
Total for fund: Item 3600-001-200(B), Budget Act of 1990 ..... $224.90

Total for fund: Item 3720-001-001(A), Budget Act of 1990 ..... $183.02
Total for fund: Item 3790-001-001(A), Budget Act of 1990 ..... $934.53
Total for fund: Item 3790-001-001(B), Budget Act of 1990 ..... $986.50
Total for fund: Item 3790-001-011(A), Budget Act of 1990 ..... $457.92
Total for fund: Item 3860-001-001(C), Budget Act of 1990 ..... $175.63
Total for fund: Item 3940-001-001(A), Budget Act of 1990 ..... $43,672.73
Total for fund: Item 4130-001-632, Budget Act of 1990 $2,602.59
Total for fund: Item 4140-001-001(B), Budget Act of 1990 ..... $302.98
Total for fund: Item 4170-001-001(A), Budget Act of 1990 ..... $189.00
Total for fund: Item 4260-001-001(A), Budget Act of 1990 ..... $2,090.81
Total for fund: Item 4260-001-001(B), Budget Act of 1990 ..... $7,996.51
Total for fund: Item 4260-011-455, Budget Act of 1990 $76,610.03
Total for fund: Item 4300-003-001(A), Budget Act of 1990 ..... $53,749.93
Total for fund: Item 4300-101-001(A), Budget Act of 1990 ..... $2,235.37
Total for fund: Item 4300-101-001(B), Budget Act of 1990 ..... $8,384.54
Total for fund: Item 4440-001-001(B), Budget Act of 1990 ..... $82.34
Total for fund: Item 4440-011-001(A), Budget Act of 1990 ..... $14,760.56
Total for fund: Item 4440-011-001(B), Budget Act of 1990 ..... $250.00
Total for fund: Item 5100-001-870(A), Budget Act of 1990 ..... $1,526.32
Total for fund: Item 5100-001-870(B), Budget Act of 1990 ..... $1,106.54
Total for fund: Item 5160-001-001(A), Budget Act of 1990 ..... $9,646.23
Total for fund: Item 5160-001-001(D), Budget Act of 1990 ..... $498.70
Total for fund: Item 5180-001-001(A), Budget Act of 1990 ..... $13,937.59
Total for fund: Item 5180-001-001(D), Budget Act of 1990 ..... $43,118.11
Total for fund: Item 5180-001-001(F), Budget Act of 1990 ..... $58.33

Total for fund: Item 5180-121-001(A), Budget Act of 1990 ..... $64,640.92
Total for fund: Item 5240-001-001(A), Budget Act of 1990 ..... $322,001.81
Total for fund: Item 5240-101-001(A), Budget Act of 1990 ..... $2,308.00
Total for fund: Item 5240-101-001(B), Budget Act of 1990 ..... $654.22
Total for fund: Item 5460-001-001(A), Budget Act of 1990 ..... $376.59
Total for fund: Item 5460-001-001(B), Budget Act of 1990 ..... $9,655.31
Total for fund: Item 5460-001-001(C), Budget Act of 1990 ..... $781.68
Total for fund: Item 5460-001-001(D), Budget Act of 1990 ..... $340.32
Total for fund: Item 6100-001-001(B), Budget Act of 1990 ..... $1,190.65
Total for fund: Item 6100-001-001(C), Budget Act of 1990 ..... $304.51
Total for fund: Item 6100-006-001(A), Budget Act of 1990 ..... $24,472.00
Total for fund: Item 6110-001-001(A), Budget Act of 1990 ..... $16.00
Total for fund: Item 6110-001-001(B), Budget Act of 1990 ..... $217.62
Total for fund: Item 6610-001-001(A), Budget Act of 1990 ..... $6,959.78
Total for fund: Item 6610-001-001(E), Budget Act of 1990 ..... $373.42
Total for fund: Item 6860-001-001(A), Budget Act of 1990 ..... $291.21
Total for fund: Item 6870-001-001(B), Budget Act of 1990 ..... $3,795.00
Total for fund: Item 8350-001-001(E), Budget Act of 1990 ..... $7,587.58
Total for fund: Item 8450-001-001(B), Budget Act of 1990 ..... $488.88
Total for fund: Item 8560-001-510(B), Budget Act of 1990 ..... $60.57
Total for fund: Item 8570-001-001(A), Budget Act of 1990 ..... $3,026.21
Total for fund: Item 8570-001-001(B), Budget Act of 1990 ..... $4,312.52
Total for fund: Item 8660-001-412(A), Budget Act of 1990 ..... $1,362.74
Total for fund: Item 8940-001-001(A), Budget Act of 1990 ..... $3,500.00
Total for fund: Item 8940-001-001(B), Budget Act of 1990 ..... $1,552.80

Total for fund: Personal Income Tax Fund	$5,555.25
Total for fund: Prison Industry Revolving Fund	$302.85
Total for fund: Restitution Fund	$804.25
Total for fund: Retail Sales Tax Fund	$117,390.20
Total for fund: State Lottery Fund	$740.93
Total for fund: State Teachers' Retirement Fund	$8,885.35
Total for fund: Tax Relief and Refund Account	$85,186.12
Total for fund: Transportation Fund, Motor Vehicle Account	$213.55
Total for fund: Transportation Fund, Motor Vehicle Fuel Account	$1,235.05
Total for fund: Transportation Fund, State Highway Account	$3,505.04
Total for fund: Transportation Revolving Account	$1,321.71
Total for fund: Unclaimed Property Fund	$377.76
Total for fund: Unemployment Administration Fund	$1,777.18
Total for fund: Unemployment Compensation Disability Fund	$718.50
Total for fund: Unemployment Fund	$3,208.12

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to settle claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 1406

An act to repeal Sections 66780.5 and 66796.32 of the Government Code, to amend Sections 41003, 41303, 41750, 41793, 41823, 41825, and 41903 of, to add Section 41802 to, to add Chapter 3.5 (commencing with Section 41500) to, to repeal Article 10 (commencing with Section 41280) of Chapter 2 of, and Article 10 (commencing with Section 41480) of, Chapter 3 of, Part 2 of Division 30 of, the Public Resources Code, relating to solid waste.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 66780.5 of the Government Code is repealed.

SEC. 2. Section 66796.32 of the Government Code is repealed.

SEC. 3. Section 41003 of the Public Resources Code is amended

to read:

41003. Each city source reduction and recycling element shall include, but is not limited to, all of the following components for solid waste generated in the jurisdiction of the plan:

(a) A waste characterization component.

(b) A source reduction component.

(c) A recycling component.

(d) A composting component.

(e) A solid waste facility capacity component.

(f) An education and public information component.

(g) A funding component.

(h) A special waste component.

SEC. 4. Article 10 (commencing with Section 41280) of Chapter 2 of Part 2 of Division 30 of the Public Resources Code is repealed.

SEC. 5. Section 41303 of the Public Resources Code is amended to read:

41303. Each county source reduction and recycling element shall include, but is not limited to, all of the following components for solid waste generated in the jurisdiction of the plan:

(a) A waste characterization component.

(b) A source reduction component.

(c) A recycling component.

(d) A composting component.

(e) A solid waste facility capacity component.

(f) An education and public information component.

(g) A funding component.

(h) A special waste component.

SEC. 6. Article 10 (commencing with Section 41480) of Chapter 3 of Part 2 of Division 30 of the Public Resources Code is repealed.

SEC. 7. Chapter 3.5 (commencing with Section 41500) is added to Part 2 of Division 30 of the Public Resources Code, to read:

CHAPTER 3.5. HOUSEHOLD HAZARDOUS WASTE ELEMENTS

Article 1. City Household Hazardous Waste Elements

41500. On or before July 1, 1991, each city shall prepare, adopt, and submit to the county in which the city is located a household hazardous waste element which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes, as defined in Section 25117 of the Health and Safety Code, which are generated by households in the city and which should be separated from the solid waste stream.

In preparing a city household hazardous waste element pursuant to this section, a city may use components of a city hazardous waste plan prepared pursuant to subdivision (c) of Section 25135.7 of the Health and Safety Code if the city hazardous waste plan meets the requirements of this article and Section 41802.

Article 2. County Household Hazardous Waste Elements

41510. On or before July 1, 1991, each county shall prepare a household hazardous waste element which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes, as defined in Section 25117 of the Health and Safety Code, which are generated by households in the unincorporated area of the county and which should be separated from the solid waste stream. In preparing a county household hazardous waste element pursuant to this section, a county may use components of a county hazardous waste management plan prepared pursuant to Section 25135.1 of the Health and Safety Code, if that plan meets the requirements of this article and of Section 41802.

SEC. 8. Section 41750 of the Public Resources Code is amended to read:

41750. Each county and city and county shall prepare and submit to the board in accordance with the schedule set forth in Chapter 6 (commencing with Section 41780), a countywide integrated waste management plan, which includes all of the following:

(a) All city source reduction and recycling elements prepared pursuant to Chapter 2 (commencing with Section 41000) and submitted to the county.

(b) The county's source reduction and recycling element for the unincorporated area of the county prepared pursuant to Chapter 3 (commencing with Section 41300).

(c) All city household hazardous waste elements which were prepared pursuant to Article 1 (commencing with Section 41500) of Chapter 3.5 and submitted to the county.

(d) The county household hazardous waste element for the unincorporated area of the county prepared pursuant to Article 2 (commencing with Section 41510) of Chapter 3.5.

(e) The countywide siting element prepared pursuant to Chapter 4 (commencing with Section 41700).

SEC. 9. Section 41793 of the Public Resources Code is amended to read:

41793. Each county or city shall hold at least one public hearing before approving its source reduction and recycling element, household hazardous waste element, and the countywide integrated waste management plan.

SEC. 10. Section 41802 is added to the Public Resources Code, to read:

41802. (a) Within 120 days of receiving a city or county household hazardous waste element, the board shall approve or disapprove the element.

(b) The board shall not disapprove a household hazardous waste element if the local agency preparing the element demonstrates to the board that, in implementing the household hazardous waste element, the local agency will comply with all of the following requirements:

(1) The local agency will use feasible methods to properly reduce, collect, recycle, treat, and dispose of household hazardous waste generated within its jurisdiction.

(2) The local agency will devote reasonable expenditures to the safe reduction, collection, recycling, treatment, and disposal of household hazardous waste, relative to the other expenditures required by this division.

(3) The local agency will make all reasonable efforts to inform the public of, and to encourage public participation in, the household hazardous waste program.

(4) That, regardless of the number of household hazardous waste collection events held each year by a local agency, or the actual number of households served, the collection program is available for use by all households within the jurisdiction of the local agency, and provides a safe alternative for all residents within the jurisdiction of the local agency to properly and safely dispose of household hazardous waste.

(c) In determining whether a local agency meets the conditions for approval of a household hazardous waste element contained in subdivision (b), the board shall consider the geographic size and population of the city or county, and quantity of household hazardous waste generated within the jurisdiction of the city or county.

The board may provide an exemption from the requirements of subdivision (b) if a city or a county demonstrates, and the board concurs, that compliance with these requirements is not feasible due to the small geographic size of the city or county and the small quantity of waste generated within the city or county. The board may establish alternative, but less comprehensive, requirements for those counties or cities to ensure compliance with this division.

SEC. 11. Section 41823 of the Public Resources Code is amended to read:

41823. A city or county may enter into a memorandum of understanding with another city, county, regional planning agency, agency formed under a joint exercise of powers agreement, or district established to manage solid waste for the purpose of preparing and implementing source reduction and recycling elements, household hazardous waste elements, or a countywide integrated waste management plan.

SEC. 12. Section 41825 of the Public Resources Code is amended to read:

41825. Not less frequently than every two years, the board shall review each city or county source reduction and recycling element and household hazardous waste element. If, after a public hearing, which, to the extent possible, is held in the local agency's jurisdiction, the board finds that the city or county has failed to implement its source reduction and recycling element or its household hazardous waste element, the board shall issue an order of compliance with a specific schedule for achieving compliance.

SEC. 13. Section 41903 of the Public Resources Code is amended to read:

41903. A city or county may assess special fees of a reasonable amount on the importation of waste from outside of the county to publicly owned or privately owned facilities. No city or county shall export solid waste to any other jurisdiction unless the exporting city or county has, within one year following the date specified in Section 41791 or a later date established or permitted by the board, an approved city or county household hazardous waste element and a source reduction and recycling element which have both been implemented, or have submitted a countywide integrated waste management plan, and is in compliance with it, provided, however, that, until one year following the date specified in Section 41791 or a later date established by the board, nothing herein shall be construed as prohibiting the export of solid waste. The board may waive the requirements of this section if the board determines that all additional reasonable source reduction and recycling programs are being implemented in the city or county or if the board determines that the system to export waste supports or enhances the city or county source recovery and recycling element.

SEC. 14. Sections 1 to 12, inclusive, of this act shall become operative only if AB 3992 is enacted.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1407

An act to amend Sections 16072 and 16077 of, and to add Section 16078 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 16072 of the Vehicle Code is amended to read:

16072. (a) The suspension of the driving privilege of a person as provided in Section 16070 shall not be terminated until one year has elapsed from the date of actual commencement of the suspension and until the person files proof of financial responsibility as provided

in Chapter 3 (commencing with Section 16430), except that the suspension shall be reinstated if the person fails to maintain proof of financial responsibility for three years. However, in lieu of suspending a person's driving privilege pursuant to this section, the department may, upon application, if the person files and thereafter maintains proof of financial responsibility as provided in this section and pays a penalty fee to the department of two hundred fifty dollars ($250), restrict the person's driving privilege to any of the following situations:

(1) Necessary travel to and from that person's place of employment.

(2) Driving that is required in the person's course of employment, when driving a motor vehicle is necessary in order to perform the duties of the person's primary employment.

(3) Necessary travel to transport a minor dependent in that person's immediate family to and from an institute of primary or secondary instruction, if the chief administrative officer or principal of the educational institution certifies in writing to the department that the minor dependent is enrolled in the educational institution and no form of public transportation or schoolbus is available between the applicant's place of residence and the educational institution.

The restriction shall remain in effect for the period of suspension required by this section, so long as proof of financial responsibility is maintained.

(b) If a suspension has been imposed under Section 16070 and one year has elapsed from the date the suspension actually commenced, that suspension shall be terminated if the driving privilege is suspended under Section 16370 or 16381 as the result of a judgment arising out of the accident for which proof of financial responsibility was required to be established. The department may reimpose the suspension of the driving privilege of a person under Section 16070 if the suspension under Section 16370 or 16381 is later set aside for a reason other than that the person has satisfied the judgment in full or to the extent provided in Chapter 2 (commencing with Section 16250) and has given proof of ability to respond in damages as provided in Chapter 3 (commencing with Section 16430).

(c) Notwithstanding Chapter 2 (commencing with Section 42200) of Division 18, all revenues derived from the penalty fees provided in subdivision (a) shall, after deduction by the department of the costs incurred by the department in administering this section, be deposited in the Financial Responsibility Penalty Account in the General Fund. The balance in this fund on each July 1, which is not subject to appropriation as provided in Section 12980 of the Insurance Code, shall revert to the General Fund.

SEC. 2. Section 16077 of the Vehicle Code is amended to read:

16077. (a) The department, upon application and payment of a fifty dollar ($50) fee and a penalty fee of two hundred dollars ($200), may issue a restricted license to an applicant with serious health

problems, or to an applicant with an immediate family member with serious health problems, when the applicant's privilege to drive is otherwise suspended under this chapter. The restricted license may be issued to enable the applicant to drive a motor vehicle for the purpose of receiving medical treatments of a prolonged and repetitive nature for the applicant or the member of the applicant's immediate family with serious health problems, if the applicant files and maintains proof of financial responsibility on file with the department pursuant to Section 16021 and there is no other suitable means of transportation available.

(b) The application shall set forth the nature of the health problem, the nature of the treatments, the duration and location of the treatments, and the schedule for visits. The applicant shall submit documentation signed by the treating physician and surgeon as necessary to assist the department in its decision to grant or deny the restricted license. Upon reviewing the application, the department may determine that an investigation as to the person's fitness to operate a motor vehicle is warranted. If the department makes this determination, the department may conduct an investigation in a manner provided for in Chapter 3 (commencing with Section 13800) of Division 6.

(c) In reviewing the application, the department shall give due consideration to the circumstances set forth in the application and shall be guided by principles of fairness and humanity.

(d) Notwithstanding Chapter 2 (commencing with Section 42200) of Division 18, all revenues derived from the penalty fees provided in subdivision (a) shall, after deduction by the department of the costs incurred by the department in administering this section, be deposited in the Financial Responsibility Penalty Account in the General Fund.

SEC. 3. Section 16077 of the Vehicle Code is amended to read:

16077. (a) The department, upon application and payment of a fifty dollar ($50) fee and a penalty fee of two hundred dollars ($200), may issue a restricted license to an applicant with serious health problems, or to an applicant with an immediate family member with serious health problems, when the applicant's privilege to drive is otherwise suspended under this chapter. The restricted license may be issued to enable the applicant to drive a motor vehicle for the purpose of receiving medical or mental health treatments of a prolonged and repetitive nature for the applicant or the member of the applicant's immediate family with serious health problems, if the applicant files and maintains proof of financial responsibility on file with the department pursuant to Section 16021 and there is no other suitable means of transportation available.

(b) The application shall set forth the nature of the health problem, the nature of the treatments, the duration and location of the treatments, and the schedule for visits. The applicant shall submit documentation signed by the treating physician and surgeon or licensed psychotherapist, as defined in subdivisions (a), (b), (c), and

(e) of Section 1010 of the Evidence Code, as necessary to assist the department in its decision to grant or deny the restricted license. Upon reviewing the application, the department may determine that an investigation as to the person's fitness to operate a motor vehicle is warranted. If the department makes this determination, the department may conduct an investigation in a manner provided for in Chapter 3 (commencing with Section 13800) of Division 6.

(c) In reviewing the application, the department shall give due consideration to the circumstances set forth in the application and shall be guided by principles of fairness and humanity.

(d) Notwithstanding Chapter 2 (commencing with Section 42200) of Division 18, all revenues derived from the penalty fees provided in subdivision (a) shall, after deduction by the department of the costs incurred by the department in administering this section, be deposited in the Financial Responsibility Penalty Account in the General Fund.

SEC. 4. Section 16078 is added to the Vehicle Code, to read:

16078. Any person who has paid the penalty fee prescribed in subdivision (a) of Section 16072, whether or not the person has received the license restriction authorized by that section, may also apply for and receive a restricted license under Section 16077 without paying the fees prescribed in Section 16077. Any person who has paid the fees prescribed in subdivision (a) of Section 16077, whether or not the person has received the restricted license authorized by that section, may also apply for and receive the license restriction prescribed in Section 16072.

SEC. 5. Section 3 of this bill incorporates amendments to Section 16077 of the Vehicle Code proposed by both this bill and AB 3470. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 16077 of the Vehicle Code, and (3) this bill is enacted after AB 3470, in which case Section 2 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1408

An act to amend Sections 19410.8 and 19546 of the Business and Professions Code, relating to horseracing.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 19410.8 of the Business and Professions Code is amended to read:

19410.8. "Show jumping race" means a horserace, over obstacles made of artificial or natural material, which is shorter than a steeplechase course, and is run by horses for time with faults converted to time. Requirements and rules for a show jumping race shall conform to the requirements and rules of the American Horse Shows Association.

SEC. 2. Section 19546 of the Business and Professions Code is amended to read:

19546. (a) In order to encourage and develop the racing of all horses in California, regardless of breed, whenever the California State Fair and Exposition, a county fair, or a district agricultural association fair conducts a program of parimutuel wagering, it may provide a program of mixed breed racing that includes thoroughbred racing, harness racing, quarter horse racing, Arabian racing, paint racing, Appaloosa racing, steeplechase races, barrel races, and show jumping races.

(b) All recognized breeds of horses may compete in barrel races, show jumping races, and steeplechase races. Parimutuel wagering may be conducted on barrel races, show jumping races, and steeplechase races.

CHAPTER 1409

An act to add and repeal Section 769.5 of the Insurance Code, relating to insurance.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 769.5 is added to the Insurance Code, to read:

769.5. (a) Notwithstanding Section 769, except subdivision (b) and paragraph (1) and (2) of subdivision (e) of Section 769, after the termination of a written agency contract between an automobile

insurer and a duly licensed insurance agency, the insurer shall continue the agency's authority, exclusively in accordance with this section, to act on behalf of the insurer to service an automobile insurance policy, as described in subdivision (a) of Section 660, for a period not to exceed two years after the termination of the agency, if the policy cannot be canceled or nonrenewed pursuant to law. An agency continuing to service a renewed automobile insurance policy pursuant to this section shall receive a commission at a level equal to the prevailing commission rate paid by the insurer to other agencies writing private passenger auto insurance, by that insurer in this state. The agency shall provide the services as specified by the insurer with regard to renewed policyholders on the date of the contract termination during the period which the agency receives compensation pursuant to this section.

(b) This section shall not apply to an agent who is an employee of an insurer, or to an agent who, by contractual agreement either represents only one insurer or a group of affiliated insurers or who is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to others.

(c) Nothing in this section shall limit the right of a withdrawing insurer not to renew a policy of automobile insurance as described in subdivision (a) of Section 660.

(d) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1996, deletes or extends that date.

CHAPTER 1410

An act to amend Section 16077 of the Vehicle Code, relating to drivers' licenses.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 16077 of the Vehicle Code is amended to read:

16077. (a) The department, upon application and payment of a fifty dollar ($50) fee and a penalty fee of two hundred dollars ($200), may issue a restricted license to an applicant with serious health problems when his or her privilege to drive is otherwise suspended under this chapter, to enable the applicant to drive a motor vehicle for the purpose of receiving medical or mental health treatments of a prolonged and repetitive nature, if the person files and maintains proof of financial responsibility on file with the department pursuant to Section 16021.

The application shall set forth the nature of the health problem,

the nature of the treatments, the duration and location of the treatments, and the schedule for visits. The applicant shall submit documentation signed by the applicant's treating physician and surgeon or licensed psychotherapist, as defined in subdivisions (a), (b), (c), and (e) of Section 1010 of the Evidence Code, as necessary to assist the department in its decision to grant or deny the restricted license. Upon reviewing the application, the department may determine that an investigation as to the person's fitness to operate a motor vehicle is warranted. If the department makes this determination, the department may conduct an investigation in a manner provided for in Chapter 3 (commencing with Section 13800) of Division 6.

In reviewing the application, the department shall give due consideration to the circumstances set forth in the application and shall be guided by principles of fairness and humanity.

(b) Notwithstanding Chapter 2 (commencing with Section 42200) of Division 18, all revenues derived from the penalty fees provided in subdivision (a) shall be deposited in the Financial Responsibility Penalty Account in the General Fund.

SEC. 2. Section 16077 of the Vehicle Code is amended to read:

16077. (a) The department, upon application and payment of a fifty dollar ($50) fee and a penalty fee of two hundred dollars ($200), may issue a restricted license to an applicant with serious health problems, or to an applicant with an immediate family member with serious health problems, when the applicant's privilege to drive is otherwise suspended under this chapter. The restricted license may be issued to enable the applicant to drive a motor vehicle for the purpose of receiving medical or mental health treatments of a prolonged and repetitive nature for the applicant or the member of the applicant's immediate family with serious health problems, if the applicant files and maintains proof of financial responsibility on file with the department pursuant to Section 16021 and there is no other suitable means of transportation available.

(b) The application shall set forth the nature of the health problem, the nature of the treatments, the duration and location of the treatments, and the schedule for visits. The applicant shall submit documentation signed by the treating physician and surgeon or licensed psychotherapist, as defined in subdivisions (a), (b), (c), and (e) of Section 1010 of the Evidence Code, as necessary to assist the department in its decision to grant or deny the restricted license. Upon reviewing the application, the department may determine that an investigation as to the person's fitness to operate a motor vehicle is warranted. If the department makes this determination, the department may conduct an investigation in a manner provided for in Chapter 3 (commencing with Section 13800) of Division 6.

(c) In reviewing the application, the department shall give due consideration to the circumstances set forth in the application and shall be guided by principles of fairness and humanity.

(d) Notwithstanding Chapter 2 (commencing with Section

42200) of Division 18, all revenues derived from the penalty fees provided in subdivision (a) shall, after deduction by the department of the costs incurred by the department in administering this section, be deposited in the Financial Responsibility Penalty Account in the General Fund.

SEC. 3. Section 2 of this bill incorporates amendments to Section 16077 of the Vehicle Code proposed by both this bill and AB 2817. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 16077 of the Vehicle Code, and (3) this bill is enacted after AB 2817, in which case Section 1 of this bill shall not become operative.

CHAPTER 1411

An act to add Chapter 3 (commencing with Section 7287) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to local taxation.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Chapter 3 (commencing with Section 7287) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 3. GRAFFITI PREVENTION TAX

7287. (a) The legislative body of any city or county, or city and county, may levy a tax by an ordinance approved by two-thirds of the electors voting on the measure, in addition to any other tax authorized by this division, on the privilege of selling at retail within its jurisdiction aerosol paint containers, containers of any other marking substance, felt tip markers which have a flat or angled writing surface of one-half inch or greater, or any other marking instruments, at the rate of no more than ten cents ($0.10) per aerosol paint container or container of other marking substance, and no more than five cents ($0.05) per felt tip marker or other marking instrument.

(b) For purposes of this chapter, "aerosol paint container" means any aerosol container, regardless of the material from which it is made, which is adapted or made for the purpose of spraying paint capable of defacing property.

(c) For purposes of this chapter, "felt tip marker" means any broad-tipped indelible marker or similar implement containing an ink that is not water-soluble.

(d) For purposes of this chapter, "marking substance" and

"marking instrument" means any substance or instrument, other than aerosol paint containers and felt tip markers, which could be used to draw, spray, paint, or mark, including, but not limited to, shoe polish applicators.

7287.2. Any ordinance levying a tax pursuant to this chapter shall provide for the following:

(a) That the city or county, or city and county, shall contract prior to the effective date of the ordinance with the State Board of Equalization to perform all functions incident to the administration or operation of the ordinance for as long as the city or county, or city and county, has an operative ordinance enacted pursuant to this chapter.

(b) That the ordinance is repealed no later than five years after its effective date.

7287.4. Every retailer engaged in business in a city or county, or city and county, which has an operative ordinance enacted pursuant to this chapter shall, at the time of making the sales of aerosol paint containers or felt tip markers, collect the tax from the consumer and give to the consumer a receipt therefor in the manner and form prescribed by the State Board of Equalization.

7287.6. All revenues collected pursuant to a tax authorized by this chapter shall be remitted to the State Board of Equalization and allocated by the board as follows:

(a) First, for reimbursement to the board, pursuant to the contract between the board and the city or county, or city and county, of the reasonable costs of administering and enforcing the ordinance on behalf of the local entity.

(b) Second, for transmission not later than March 15 of each calendar year to each city or county, or city and county, which has an operative ordinance enacted pursuant to this chapter, in an amount corresponding to the amount of revenues derived within that jurisdiction from a tax levied by that ordinance.

Moneys transmitted to a city or county, or city and county, pursuant to this section shall only be expended by that local entity for purposes of the removal and prevention of graffiti, or for educational programs for at-risk youth to combat graffiti vandalism in all its forms.

7287.8. The State Board of Equalization shall administer and enforce the provisions of this chapter, and may prescribe, adopt, and enforce, rules and regulations for those purposes pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The board may prescribe the extent to which any rule or regulation shall be applied without retroactive effect.

7287.9. Except as provided in Section 7287.10, to the extent feasible or practicable, Chapter 5 (commencing with Section 6451), Chapter 6 (commencing with Section 6701), Chapter 7 (commencing with Section 6901), and Chapter 8 (commencing with Section 7051) of Part 1, shall govern determinations, collection of tax,

overpayments and refunds, and administration under this chapter.

7287.10. (a) The return and payment of the tax imposed by this chapter is due and payable to the board annually on or before February 15 following the end of the calendar year during which the tax was collected.

(b) For purposes of computing interest due on any amount of tax not paid when due, interest shall be computed to the 15th day of each succeeding month.

(c) Except in the case of fraud, intent to evade this chapter or accompanying rules and regulations, or failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 15th day of the second month following the one-year period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later. In the case of failure to make a return, every notice of determination shall be mailed within eight years after the 15th day of the second month following the one-year period for which the amount is proposed to be determined.

(d) (1) Except as provided in paragraph (2), no refund shall be approved by the board after three years from the 15th day of the second month following the one-year period for which the overpayment was made, or with respect to determinations made under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 4 (commencing with Section 6536) of Chapter 5 of Part 1, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period, or unless the credit relates to a period for which a waiver has been granted pursuant to Section 6488.

(2) A refund may be approved by the board for any period for which a waiver has been granted under Section 6488 if a claim for refund is filed with the board before the expiration of the waiver period.

(e) In all other instances where the due date specified in subdivision (a) conflicts with a due date specified in Chapter 5 (commencing with Section 6451), Chapter 6 (commencing with Section 6701), Chapter 7 (commencing with Section 6901), and Chapter 8 (commencing with Section 7051) of Part 1, the due date specified in subdivision (a) shall be substituted for any due date specified in those chapters, and periods running from or to, or otherwise based on, the otherwise applicable due date shall be adjusted accordingly.

CHAPTER 1412

An act to add Chapter 1.10 (commencing with Section 15365.30) to Part 6.7 of Division 3 of Title 2 of the Government Code, relating to the California State World Trade Commission, and making an appropriation therefor.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

I am deleting the $25,000 General Fund appropriation contained in Section 2 of Assembly Bill No 3850.

This appropriation would fund the establishment of a computerized data base to assist California Exporters in doing business with developing nations and developed nations. I am not convinced that this project is of sufficient priority to warrant funding at this time, given the critical condition of the General Fund

The demands placed on budget resources require all of us to set priorities With legislation I will be signing and the Budget enacted in July 1990, more than $54 billion in state funds will be appropriated this fiscal year This amount is more than adequate to provide the necessary essential services provided for by State Government It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1991–92 Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Assembly Bill No. 3850.

GEORGE DEUKMEJIAN, Governor

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.10 (commencing with Section 15365.30) is added to Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 1.10. TECHNICAL ASSISTANCE TO DEVELOPING NATIONS

15365.30. The Legislature finds and declares the following:

(a) International relations between the United States and developing nations face an historic challenge as world peace unfolds.

(b) Successful conversion of the political and economic structure of developing nations to democracy requires timely support from their western trading partners, including California.

(c) A significant opportunity exists for California to strengthen world political and economic prosperity by transferring the state's various technologies and providing technical assistance to these countries.

(d) It is the Legislature's intent to establish a computerized data base within the California State World Trade Commission to assist developing nations, consistent with federal law, in their conversion to democracy and in promoting their economic development.

15365.31. The data base established by the commission shall provide information critical to California exporters seeking to do

business with developing and developed nations.

15365.32. The commission shall implement the data base system in conjunction with, and modeled after, the California Agriculture Technology Institute at California State University, Fresno.

15365.33. In developing the data base, the commission shall do all of the following:

(a) Ascertain which nations and businesses could utilize technical assistance from the state and the type of assistance required.

(b) Develop a list of state expertise by subject matter which could be available to provide this assistance.

(c) Ensure that all California industries and technologies are included in the data base.

(d) Ensure that all information in the data base is made available by computer modem.

SEC. 2. The sum of twenty-five thousand dollars ($25,000) is hereby appropriated from the General Fund to the California State World Trade Commission to establish the data base as required by Chapter 1.10 (commencing with Section 15365.30) of Part 6.7 of Division 3 of Title 2 of the Government Code.

CHAPTER 1413

An act to add Section 17508.5 to, and to add Article 7 (commencing with Section 17580) to Chapter 1 of Part 3 of Division 7 of, the Business and Professions Code, relating to environmental advertising.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 17508.5 is added to the Business and Professions Code, to read:

17508.5. It is unlawful for any person to represent that any consumer good which it manufactures or distributes is "ozone friendly," or any like term which connotes that stratospheric ozone is not being depleted, "biodegradable," "photodegradable," "recyclable," or "recycled" unless that consumer good meets the definitions contained in this section, or meets definitions established in trade rules adopted by the Federal Trade Commission. For the purposes of this section, the following words have the following meanings:

(a) "Ozone friendly," or any like term which connotes that stratospheric ozone is not being depleted, means that any chemical or material released into the environment as a result of the use or production of a product, will not migrate to the stratosphere and cause unnatural and accelerated deterioration of ozone.

(b) "Biodegradable" means that a material has the proven capability to decompose in the most common environment where the material is disposed within one year through natural biological processes into nontoxic carbonaceous soil, water, or carbon dioxide.

(c) "Photodegradable" means that a material has the proven capability to decompose in the most common environment where the material is disposed within one year through physical processes, such as exposure to heat and light, into nontoxic carbonaceous soil, water, or carbon dioxide.

(d) "Recyclable" means that an article can be conveniently recycled, as defined in Section 40180 of the Public Resources Code, in every county in California with a population over 300,000 persons. For the purposes of this subdivision, "conveniently recycled" shall not mean that a consumer good may be recycled in a convenience zone as defined in Section 14909.4 of the Public Resources Code.

(e) "Recycled" means that an article's contents contain at least 10 percent, by weight, postconsumer material, as defined in subdivision (b) of Section 12200 of the Public Contract Code.

(f) "Consumer good" means any article which is used or bought for use primarily for personal, family, or household purposes.

(g) For the purposes of this section, a wholesaler or retailer who does not initiate a representation by advertising or by placing the representation on a package shall not be deemed to have made the representation.

SEC. 2. Article 7 (commencing with Section 17580) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

Article 7. Environmental Representations

17580. (a) Any person who represents in advertising or on the label or container of a consumer good that the consumer good which it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of such terms as "environmental choice," "ecologically friendly," "earth friendly," "environmentally friendly," "ecologically sound," "environmentally sound," "environmentally safe," "ecologically safe," "environmentally lite," "green product," or any other like term, shall maintain in written form in its records the following information and documentation supporting the validity of the representation:

(1) The reasons why the person believes the representation to be true.

(2) Any significant adverse environmental impacts directly associated with the production, distribution, use, and disposal of the consumer good.

(3) Any measures which are taken by the person to reduce the environmental impacts directly associated with the production, distribution, and disposal of the consumer good.

(4) Violations of any federal, state, or local permits directly

associated with the production or distribution of the consumer good.

(5) Whether or not, if applicable, the consumer good meets the definitions of "recycled," "recyclable," "biodegradable," "photodegradable," or "ozone friendly," as defined in Section 17508.5.

(b) Information and documentation maintained pursuant to this section shall be furnished to any member of the public upon request.

(c) For the purposes of this section, a wholesaler or retailer who does not initiate a representation by advertising or by placing the representation on a package shall not be deemed to have made the representation.

(d) It is the intent of the Legislature that the information and documentation supporting the validity of the representation maintained under this section shall be fully disclosed to the public, within the limits of all applicable laws.

17581. Any violation of this article is a misdemeanor punishable by imprisonment in the county jail not to exceed six months, or by a fine not to exceed two thousand five hundred dollars ($2,500), or by both.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1414

An act to amend Section 20207.7 of, to amend and renumber Section 20104 of, and to add and repeal Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to public construction.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 20104 of the Public Contract Code is amended and renumbered to read:

20103.5. In all contracts subject to this part where federal funds are involved, no bid submitted shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall

be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. The agency shall include a statement to that effect in the standard form of prequalification questionnaire and financial statement. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

SEC. 2. Article 1.5 (commencing with Section 20104) is added to Chapter 1 of Part 3 of the Public Contract Code, to read:

Article 1.5. Resolution of Construction Claims

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that "public work" does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

20104.2. For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars ($50,000), the

local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) If following the meet and confer conference the claim or any portion remains in dispute, the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

20104.6. (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

20104.8. (a) This article shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

(b) As stated in subdivision (c) of Section 20104, any contract entered into between January 1, 1991, and January 1, 1994, which is subject to this article shall incorporate this article. To that end, these contracts shall be subject to this article even if this article is repealed pursuant to subdivision (a).

SEC. 3. Section 20207.7 of the Public Contract Code is amended to read:

20207.7. Unless the amount involved in the purchase at any one time of any articles for which no contract has been entered into exceeds ten thousand dollars ($10,000), the board may purchase the articles without the necessity of advertising or letting contracts. Where the cost of any articles for which no contract has been entered into exceeds ten thousand dollars ($10,000), the board shall advertise for sealed bids for furnishing the district the articles. In the matter of advertising, opening and accepting bids, and the letting of

contracts, the board shall proceed in all respects in the manner and form provided in the case of contracts for annual supplies.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1415

An act to amend Sections 1981 and 1982 of, and to add Sections 1981.2 and 2558.2 to, the Education Code, relating to education.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1981 of the Education Code is amended to read:

1981. The county board of education may enroll in community schools any of the following:

(a) Pupils who have been expelled from a school while attending either continuing classes, opportunity classes, or alternative classes.

(b) Pupils who have been referred to county community schools by a school district as a result of the recommendation by a school attendance review board.

(c) Pupils who are probation-referred pursuant to Sections 300, 601, 602, and 654 of the Welfare and Institutions Code, or who are on probation or parole and who are not in attendance in any school.

(d) Homeless children.

SEC. 2. Section 1981.2 is added to the Education Code, to read:

1981.2. For purposes of this chapter, the term "homeless children" means either of the following:

(a) A schoolaged child who lacks a fixed, regular, and adequate nighttime residence.

(b) A schoolaged child who has a primary nighttime residence that is any of the following:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations.

(2) An institution that provides a temporary residence for

individuals intended to be institutionalized.

(3) A temporary, makeshift arrangement in the accommodations of other persons.

(4) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

SEC. 3. Section 1982 of the Education Code is amended to read:

1982. (a) County community schools shall be administered by the county superintendent of schools.

For purposes of making apportionments from the State School Fund and the levying of local taxes, any attendance generated by students in county community schools pursuant to subdivisions (a), (b), and (d) of Section 1981 shall be credited to the district of residence. School districts shall pay to the county for the purposes of the community schools the entire revenue limit for each average daily attendance credited pursuant to this section. No funds generated by such average daily attendance shall be retained by the district of residence. The county superintendent of schools may use funds derived from existing tax revenues to provide additional funding per student enrolled in county community schools but not to exceed the difference between the amount derived per student from the district and the amount available per student enrolled in juvenile court schools.

(b) For the purposes of making apportionments from the State School Fund, pupils enrolled in county community schools pursuant to subdivision (c) of Section 1981 shall be deemed to be enrolled in a county juvenile hall or camp.

(c) For the purposes of this section, the county superintendent of schools providing educational services to homeless children shall be deemed to be the district of residence of those children.

SEC. 4. Section 2558.2 is added to the Education Code, to read:

2558.2. (a) The Superintendent of Public Instruction shall use the revenue limit per unit of average daily attendance of the largest unified school district in the county to determine the revenue limits per unit of average daily attendance for county superintendents who provide education for homeless children pursuant to subdivision (c) of Section 1982.

(b) The county superintendent shall certify to the Superintendent of Public Instruction that no school district in the county is also claiming average daily attendance for those pupils.

(c) State apportionments to county superintendents for the provision of education services to homeless children shall be restricted to expenditure on education services to homeless children and county administrative expenses related thereto.

CHAPTER 1416

An act to amend Section 14030.5 of the Government Code, relating to government contracts.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 14030.5 of the Government Code is amended to read:

14030.5. (a) As used in this section, the following terms have the following meanings:

(1) "Socially and economically disadvantaged business concern" means a business that meets both of the following criteria:

(A) A business that is at least 51 percent owned by one or more socially and economically disadvantaged persons or one or more socially or economically disadvantaged persons or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more of those persons.

(B) A business whose management and daily business operations are controlled by one or more socially and economically disadvantaged persons or one or more socially or economically disadvantaged persons.

(2) "Socially and economically disadvantaged persons" and "socially or economically disadvantaged persons" include women, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other group of natural persons determined by the director to be so disadvantaged.

(b) The department shall certify socially and economically disadvantaged business concerns, as defined by subdivision (a). All state agencies shall, and any local agency may, accept the certification of a socially and economically disadvantaged business concern by the department as valid status of that business when awarding contracts to socially and economically disadvantaged business concerns. No state agency shall require the business to comply with any other certification process for certifying socially and economically disadvantaged business concerns.

(c) The department shall certify minority business enterprises and women business enterprises, as defined in subdivisions (e), (f), and (g) of Section 10115.1 of the Public Contract Code for transportation-related projects. All state agencies shall accept the certification of a minority or women business enterprise by the

department as valid status of that business when awarding contracts. No state agency shall require the business to comply with any other certification process for certifying minority and women business enterprises. The department shall not be required to accept the certification of a minority business enterprise or women business enterprise by any other state agency.

(d) All local agencies' certification of the business concern as a minority or women owned business enterprise may not require the business concern to provide information on the application forms of the local agencies which duplicates the information previously provided to the department on the department's application forms, provided the business concern submits to the local agencies a copy of the department's completed application forms and all other documentation previously submitted to the department in support of the department's certification of the business within one year from the date that the application forms and supporting documentation are submitted to the department for certification of the business enterprise. Local agencies or associations of local agencies which utilize the department's application forms and supplemental documentation thereto may make their own independent certification determinations and shall not be required to accept the certification determinations of the department. The department shall not require a business concern to complete the department's application forms, if, and to the extent, the business concern submits to the department copies of completed certification forms of a local agency or association of local agencies on which is provided the same information as is required to be provided on the department's application forms. Each local agency may perform one site visit per year to determine ownership and control of the business concern.

CHAPTER 1417

An act to amend Section 11590 of, to add Section 11648 to, and to repeal and add Section 11647 of, the Health and Safety Code, relating to drugs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares that clandestine laboratories which produce illegal drugs, primarily methamphetamine, are proliferating in California. These laboratories supply illicit substances, endanger law enforcement personnel who investigate them and those who live near them, and contaminate buildings, soil, and water with toxic chemicals. In 1987

and 1988, 1,457 clandestine laboratories were seized in the United States. Of this amount, 866, or 59 percent, of the total laboratories seized were in California.

In 1986, the Legislature, recognizing the dangers posed by clandestine laboratories, enacted the Clandestine Laboratory Enforcement Program (Ch. 12, (commencing with Sec. 11640), Div. 10, H.& S.C.) to provide additional funding for state and local law enforcement efforts and increased assistance to local agencies to clean up the toxic wastes produced by these sites. As a result of this program, the Department of Justice, Bureau of Narcotic Enforcement's seizures of clandestine laboratories increased 142 percent in 1987 and 198 percent in 1988 over the number of laboratories seized in 1986.

Notwithstanding the enhanced resources provided by the Clandestine Laboratory Enforcement Program, it is still estimated that three clandestine laboratories remain in operation for each one seized. The problem of clandestine laboratories is expected to grow worse as a new, fat-soluble form of methamphetamine known as "ice" becomes more popular. Experts believe that this new form of methamphetamine will become as marketable and as addictive as a similar variation of cocaine, known as "crack."

Multiagency task forces have proven to be effective in combining state and local law enforcement efforts targeted against large-scale drug operations which cross jurisdictional lines. In 1989, the Legislature adopted this approach to deal with the epidemic of crack cocaine by creating the Crack Down Task Force Program as provided in Section 15029 of the Government Code. This and similar multiagency task forces have been particularly successful in their fight against clandestine laboratory operators who frequently purchase the precursor chemicals in one jurisdiction, produce the drugs in rural areas, and then transport the finished drugs to urban areas for sale and use. Small rural agencies lack the personnel, training, and specialized resources to investigate clandestine laboratories, and even the largest city or county law enforcement agency cannot independently combat these sophisticated, multijurisdictional drug trafficking organizations.

SEC. 2. Section 11590 of the Health and Safety Code is amended to read:

11590. (a) Except as provided in subdivisions (c) and (d), any person who is convicted in the State of California of any offense defined in Section 11350, 11351, 11351.5, 11352, 11353, 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360, 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or subdivision (a) of Section 11377, or any person who is discharged or paroled from a penal institution where he or she was confined because of the commission of any such offense, or any person who is convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days

of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

For persons convicted of an offense defined in Section 11377, 11378, 11379, or 11380, this subdivision shall apply only to offenses involving controlled substances specified in paragraph (12) of subdivision (d) of Section 11054 and paragraph (2) of subdivision (d) of Section 11055, and to analogs of these substances, as defined in Section 11401. For persons convicted of an offense defined in Section 11379 or 11379.5, this subdivision shall not apply if the conviction was for transporting, offering to transport, or attempting to transport a controlled substance.

(b) Any person who is convicted in any federal court of any offense which, if committed or attempted in this state would have been punishable as one or more of the offenses enumerated in subdivision (a) shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

(c) This section does not apply to a conviction of a misdemeanor under Section 11357, 11360, or 11377.

(d) The registration requirements imposed by this section for the conviction of offenses defined in Section 11353.7, 11366.5, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, shall apply to any person who commits any of those offenses on and after January 1, 1990.

SEC. 3. Section 11647 of the Health and Safety Code is repealed.

SEC. 4. Section 11647 is added to the Health and Safety Code, to read:

11647. (a) The Crank-Up Task Force Program is hereby created within the Department of Justice as part of the Clandestine Laboratory Enforcement Program with responsibility for establishing, conducting, supporting, and coordinating crank-up task forces composed of state and local law enforcement agencies targeting the investigation, seizure, and cleanup of clandestine laboratories used to manufacture methamphetamine.

(b) The department shall coordinate all investigations undertaken by task forces operating under the Crank-Up Task Force Program with all local agencies having law enforcement responsibilities within the jurisdictions involved. The department also shall solicit participation by appropriate federal agencies with task force investigations whenever possible.

The department's Bureau of Narcotic Enforcement, Bureau of Forensic Services, and Bureau of Organized Crime and Criminal Intelligence shall provide staffing and logistical support for the crank-up task forces, supplying special agents, criminal intelligence

analysts, forensic experts, financial auditors, equipment, and funding to the task forces as needed.

(c) Local law enforcement agencies participating in the Crank-Up Task Force Program shall be reimbursed by the department for personnel overtime costs and equipment or supplies required for task force activities.

SEC. 5. Section 11648 is added to the Health and Safety Code, to read:

11648. The department shall report annually on its activities and on the accomplishments of the Clandestine Laboratory Program to the Legislature and to federal, state, and local law enforcement agencies, as well as to other interested groups. The first report to the Legislature shall be submitted no later than April 1, 1991, and it shall specify the way in which the department's organization and positions relate to the investigation, seizure, and cleanup of clandestine laboratories as of that date. The report shall also include a detailed account of program expenditures.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 7. The sum of three million dollars ($3,000,000) is hereby reappropriated from the Crack-Down Task Force Program, as appropriated by Item 0820-001-001 of the Budget Act of 1990, to the Department of Justice, to implement the Crank-Up Task Force Program pursuant to this act. Funds appropriated pursuant to this act and the Budget Act of 1990 for the crack-down and crank-up programs shall not be expended for any other purpose.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Because of the sophisticated and growing environmental, multijurisdictional drug trafficking problems created by clandestine laboratories manufacturing methamphetamine, it is essential that

this act take effect immediately.

CHAPTER 1418

An act to amend Section 10202 of, and to add Sections 1749.01, 10110.1, and 10110.2 to, the Insurance Code, relating to insurance.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1749.01 is added to the Insurance Code, to read:

1749.01. Sections 1749 and 1749.3 shall not apply to a life agent who is limited by the terms of a written agreement with the insurer, which filed on that life agent's behalf a notice of appointment with the commissioner, to transact only specific life insurance policies or annuities having an initial face amount of ten thousand dollars ($10,000) or less that are designated by the purchaser for the payment of funeral and burial expenses. The commissioner may require the insurer appointing those life agents to certify as to the limitations of the agents' representation.

SEC. 1.5. Section 10110.1 is added to the Insurance Code, to read:

10110.1. (a) An insurable interest, with reference to life and disability insurance, is an interest based upon a reasonable expectation of pecuniary advantage through the continued life, health, or bodily safety of another person and consequent loss by reason of that person's death or disability or a substantial interest engendered by love and affection in the case of individuals closely related by blood or law.

(b) An individual has an unlimited insurable interest in his or her own life, health, and bodily safety and may lawfully take out a policy of insurance on his or her own life, health, or bodily safety and have the policy made payable to whomsoever he or she pleases, regardless of whether the beneficiary designated has an insurable interest.

(c) An employer has an insurable interest, as referred to in subdivision (a), in the life or physical or mental ability of any of its directors, officers, or employees or the directors, officers, or employees of any of its subsidiaries or any other person whose death or physical or mental disability might cause financial loss to the employer; or, pursuant to any contractual arrangement with any shareholder concerning the reacquisition of shares owned by the shareholder at the time of his or her death or disability, on the life or physical or mental ability of that shareholder for the purpose of carrying out the contractual arrangement; or, pursuant to any contract obligating the employer as part of compensation arrangements or pursuant to a contract obligating the employer as

guarantor or surety, on the life of the principal obligor. The trustee of an employer or trustee of a pension, welfare benefit plan, or trust established by an employer providing life, health, disability, retirement, or similar benefits to employees and retired employees of the employer or its affiliates and acting in a fiduciary capacity with respect to those employees, retired employees, or their dependents or beneficiaries has an insurable interest in the lives of employees and retired employees for whom those benefits are to be provided. The employer shall obtain the written consent of the individual being insured.

(d) An insurable interest shall be required to exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs.

(e) Any contract of life or disability insurance procured or caused to be procured upon another individual is void unless the person applying for the insurance has an insurable interest in the individual insured at the time of the application.

(f) Notwithstanding subdivisions (a), (d), and (e), a charitable organization that meets the requirements of Section 214 of the Revenue and Taxation Code may effectuate life or disability insurance on an insured who consents to the issuance of that insurance.

(g) This section shall not be interpreted to define all instances in which an insurable interest exists.

SEC. 2. Section 10110.2 is added to the Insurance Code, to read:

10110.2. An insurer shall be entitled to rely upon all statements, declarations, and representations made by an applicant for insurance relative to the insurable interest that the applicant has in the insured, and no insurer shall incur any legal liability except as set forth in the policy, by virtue of any untrue statements, declarations, or representations so relied upon in good faith by the insurer.

SEC. 3. Section 10202 of the Insurance Code is amended to read:

10202. Life insurance conforming to all the following conditions is one form of group life insurance:

(a) Written under a policy covering when issued not less than 10 public or private employees.

(b) Written under a policy issued to the employer, the premium on which is to be paid by the employer or by the employer and employees jointly, and insuring either all of the employees or all of any class or classes thereof, determined by conditions pertaining to the employment; provided, that if a policy is intended to insure several such classes it may be issued to insure any such class of which 75 percent are covered and extended to other classes as 75 percent thereof express the desire to be covered.

(c) For amounts of insurance based upon some plan which will preclude individual selection.

(d) For the benefit of persons other than the employer. That group insurance may be for the benefit of a trustee of a pension, welfare benefit plan, or trust established by an employer providing

life, health, disability, retirement, or similar benefits to employees of the employer or its affiliates, and acting in a fiduciary capacity with respect to those employees, retired employees, or their dependents or beneficiaries, where the trustee has an insurable interest in the lives of the employees for whom those benefits are to be provided and where the employee has consented in writing to the coverage.

(e) When the premium is to be paid by the employer and employee jointly and the benefits of the policy are offered to all eligible employees, written under a policy insuring, when issued, not less than 75 percent of those employees.

(f) Terminating if, subsequent to issue, (1) the number of employees insured falls below 10 lives or 75 percent of the number of employees eligible and, (2) the employee contributions, if the premiums for the insurance are on a renewable term insurance basis, exceed one dollar ($1) per month per one thousand dollars ($1,000) of insurance coverage plus an amount equal to any additional premium per one thousand dollars ($1,000) of insurance coverage charged to cover one or more hazardous occupations.

That insurance may be issued either with or without medical examinations.

SEC. 4. Section 1 of this act shall not become operative unless Senate Bill 2642 of the 1989–90 Regular Session is enacted and becomes effective on or before January 1, 1991, in which case Section 1 shall become operative on the same date that Article 13.5 (commencing with Section 1749) of Chapter 5 of Part 2 of Division 1 of the Insurance Code, as added by Senate Bill 2642, becomes operative.

CHAPTER 1419

An act to amend Sections 13841, 13843, 13844, and 13846 of, and to add Section 13845.5 to, the Penal Code, relating to crime.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 13841 of the Penal Code is amended to read:

13841. As used in this chapter:

(a) "Community" means city or county governments or portions or combinations thereof.

(b) "Elderly or senior citizen" means individuals 55 years of age or older.

(c) "Teenagers and young adults" means individuals between the ages of 15 and 24 years of age.

(d) "Community policing" means the coalescing of community organizations, residents, law enforcement, public social services,

education, churches, and local governmental entities to unitedly combat illegal drug activity within a designated neighborhood, and create employment opportunity for neighborhood residents. In no case shall "community policing" include expenditures for the purchase of law enforcement equipment which would have been purchased from existing resources in the normal course of business.

SEC. 2. Section 13843 of the Penal Code is amended to read:

13843. (a) Allocation and award of funds made available under this chapter shall be made upon application to the Office of Criminal Justice Planning. All applications shall be reviewed and evaluated by the Office of Criminal Justice Planning.

(b) The Executive Director of the Office of Criminal Justice Planning may allocate and award funds to communities developing and providing ongoing citizen involvement and crime resistance programs in compliance with the established policies and criteria of the Office of Criminal Justice Planning. Applications receiving funding under this section shall be selected from among those deemed appropriate for funding according to the criteria, policy, and procedures established by the Office of Criminal Justice Planning.

(c) With the exception of funds awarded for programs authorized under paragraph (2) of subdivision (b) of Section 13844, no single award of funds under this chapter shall exceed a maximum of two hundred fifty thousand dollars ($250,000) for a 12-month grant period.

(d) Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Community Crime Resistance Program, be made available to support crime resistance programs.

(e) Funds disbursed under this chapter shall be supplemented with local funds constituting, at a minimum, 10 percent of the total crime resistance program budget during the initial year and 20 percent in subsequent periods of funding.

(f) Annually, up to a maximum of 10 percent of the total funds appropriated to the Community Crime Resistance Program may be used by the Office of Criminal Justice Planning to support statewide technical assistance, training, and public awareness activities relating to crime prevention.

(g) Funds awarded under this program as local assistance grants shall not be subject to review as specified in Section 14780 of the Government Code.

(h) Guidelines shall set forth the terms and conditions upon which the Office of Criminal Justice Planning is prepared to offer grants of funds pursuant to statutory authority. The guidelines do not constitute rules, regulations, orders or standards of general application.

(i) Biannually, commencing November 1, 1990, the executive director shall prepare a report to the Legislature describing in detail the operation of the program and results obtained from the California Community Crime Resistance Program. The first report

due shall reflect the implementation plan for the program expansion authorized pursuant to paragraph (2) of subdivision (b) of Section 13844, and shall include the results of a statewide survey conducted by the office to determine the types of community policing programs that already exist to combat illegal drug activity in targeted neighborhoods.

SEC. 3. Section 13844 of the Penal Code is amended to read:

13844. (a) Use of funds granted under the California Community Crime Resistance Program are restricted to the following activities:

(1) Further the goal of a statewide crime prevention network by supporting the initiation or expansion of local crime prevention efforts.

(2) Provide information and encourage the use of new and innovative refinements to the traditional crime prevention model in localities that currently maintain a well-established crime prevention program.

(3) Support the development of a coordinated service network, including information exchange and case referral between such programs as local victim-witness assistance programs, sexual assault programs, gang violence reduction programs, drug suppression programs, elderly care custodians, state and local elderly service programs, or any other established and recognizable local programs devoted to the lessening of crime and the promotion of the community's well-being.

(b) With respect to the initiation or expansion of local crime prevention efforts, projects supported under the California Community Crime Resistance Program shall do either of the following:

(1) Carry out as many of the following activities as deemed, in the judgment of the Office of Criminal Justice Planning, to be consistent with available resources:

(A) Crime prevention programs using tailored outreach techniques in order to provide effective and consistent services for the elderly in the following areas:

(i) Crime prevention information to elderly citizens regarding personal safety, fraud, theft, grand theft, burglary, and elderly abuse.

(ii) Services designed to respond to the specific and diverse crime prevention needs of elderly residential communities.

(iii) Specific services coordinated to assist in the installation of security devices or provision of escort services and victim assistance.

(B) Programs to provide training, information, and prevention literature to peace officers, elderly care custodians, health practitioners, and social service providers regarding physical abuse and neglect within residential health care facilities for the elderly.

(C) Programs to promote neighborhood involvement such as, but not limited to, block clubs and other community or resident-sponsored anti-crime programs.

(D) Personal safety programs.

(E) Domestic violence prevention programs.

(F) Crime prevention programs specifically geared to youth in schools and school district personnel.

(G) Programs which make available to residents and businesses information on locking devices, building security and related crime resistance approaches.

(H) In cooperation with the Commission on Peace Officer Standards and Training, support for the training of peace officers in crime prevention and its effects on the relationship between citizens and law enforcement.

(I) Efforts to address the crime prevention needs of communities with high proportions of teenagers and young adults, low-income families, and non-English-speaking residents, including juvenile delinquency diversion, social service referrals, and making available crime resistance literature in appropriate languages other than English.

(2) Implement a community policing program in targeted neighborhoods that are drug infested. The goal of this program shall be to empower the people against illegal drug activity. A program funded pursuant to this chapter shall be able to target one or more neighborhoods within the grant period. In order to be eligible for funding, the program shall have the commitment of the community, local law enforcement, school districts, and community service groups; and shall be supported by either the city council or the board of supervisors, whichever is applicable.

(c) With respect to the support of new and innovative techniques, communities taking part in the California Crime Resistance Program shall carry out those activities as determined by the Office of Criminal Justice Planning, that conform to local needs and are consistent with available expertise and resources. These techniques may include, but are not limited to, community policing programs or activities involving the following:

(1) Programs to reinforce the security of "latchkey" children, including neighborhood monitoring, special contact telephone numbers, emergency procedure training for the children, daily telephone checks for the children's well-being, and assistance in developing safe alternatives to unsupervised conditions for children.

(2) Programs dedicated to educating parents in procedures designed to do all of the following:

(A) Minimize or prevent the abduction of children.

(B) Assist children in understanding the risk of child abduction.

(C) Maximize the recovery of abducted children.

(3) Programs devoted to developing automated systems for monitoring and tracking crimes within organized neighborhoods.

(4) Programs devoted to developing timely "feedback mechanisms" whose goals would be to alert residents to new crime problems and to reinforce household participation in neighborhood security organizations.

(5) Programs devoted to creating and packaging special crime

prevention approaches tailored to the special needs and characteristics of California's cultural and ethnic minorities.

(6) Research into the effectiveness of local crime prevention efforts including the relationships between crime prevention activities, participants' economic and demographic characteristics, project costs, local or regional crime rate, and law enforcement planning and staff deployment.

(7) Programs devoted to crime and delinquency prevention through the establishment of partnership initiatives utilizing elderly and juvenile volunteers.

(d) All approved programs shall utilize volunteers to assist in implementing and conducting community crime resistance programs. Programs providing elderly crime prevention programs shall recruit senior citizens to assist in providing services.

(e) Programs funded pursuant to this chapter shall demonstrate a commitment to support citizen involvement with local funds after the program has been developed and implemented with state moneys.

SEC. 4. Section 13845.5 is added to the Penal Code, to read:

13845.5. Notwithstanding Section 13845, the selection of communities to receive funding pursuant to paragraph (2) of subdivision (b) of Section 13844 shall include consideration of, but is not limited to, the following:

(a) The rate of reported drug crime within the community making the application.

(b) The degree to which the program proposes to empower the people within the targeted neighborhoods to combat drug crime.

(c) The display of efforts of cooperation between the community and its local law enforcement agency in dealing with the drug crime problem.

(d) The commitment of the targeted neighborhoods to fight the drug problem.

(e) The commitment of local governmental entities to join with law enforcement and the citizens to fight the drug problem. At a minimum, this commitment shall be demonstrated by the school districts, parks and recreation departments, public social services, and code enforcement agencies.

(f) The approval of the program by either the city council or the county board of supervisors.

(g) Demonstrated effort on the part of the applicant to show how funds that may be awarded under this program may be coordinated or consolidated with other local, state, or federal funds available for the activities set forth in Section 13844.

(h) Applicant shall be a city or county law enforcement agency, or portion, or combination thereof.

SEC. 5. Section 13846 of the Penal Code is amended to read:

13846. (a) Evaluation and monitoring of all grants made under this section shall be the responsibility of the Office of Criminal Justice Planning. The Office of Criminal Justice Planning shall issue

standard reporting forms for reporting the level of activities and number of crimes reported in participating communities. The information shall be used in the biannual report to the Legislature required in subdivision (i) of Section 13843. The biannual report shall include, but not be limited to:

(1) The level of volunteer participation.

(2) The level of home and business security inspections.

(3) The number of programs directed at senior citizens and teenagers.

(4) The report due November 1, 1992, as set forth in subdivision (i) of Section 13843, shall also include the plan for implementation of the program expansion authorized pursuant to this chapter and shall include the results of a survey conducted by the office to determine the types of community policing programs that already exist to combat illegal drug activity in targeted neighborhoods.

(b) Information on successful programs shall be made available and relayed to other California communities through the Office of Criminal Justice Planning technical assistance procedures.

SEC. 6. It is the intent of the Legislature that funding for programs operating pursuant to paragraph (2) of subdivision (b) of Section 13844 of the Penal Code shall be provided for in accordance with subdivision (g) of Provision 3 of Item 8100-101-890 of Section 2.00 of the Budget Act of 1990.

CHAPTER 1420

An act to amend Sections 31, 790.01, 1621, 1625, 1627, 1632, 1635, 1637, 1639, 1640, 1644, 1647, 1648, 1649, 1649.5, 1650, 1652, 1656, 1658, 1661, 1662, 1665, 1668, 1673, 1675, 1685, 1686, 1688, 1689, 1691, 1692.1, 1693, 1703, 1704, 1704.5, 1705, 1707, 1707.5, 1711, 1712, 1712.5, 1714, 1718, 1725, 1727, 1728, 1729.5, 1731, 1732, 1733, 1735, 1735.5, 1739, 1745, 1746, 1747, 1750, 1750.5, 1751, 1751.3, 1751.6, 1755, 1758.1, 1758.2, and 1758.3 of, to add Sections 1727.5 and 1730.5 to, to add and repeal Article 13.5 (commencing with Section 1749) of Chapter 5 of Part 2 of Division 1 of, and to repeal Sections 1626, 1645, 1671, 1701, 1723, 1724, 1726, and 1758.4 of, the Insurance Code, relating to insurance, and making an appropriation therefor.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 28, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 31 of the Insurance Code is amended to read:

31. "Insurance agent" means a person authorized, by and on behalf of an insurer, to transact all classes of insurance other than life insurance.

SEC. 2. Section 790.01 of the Insurance Code is amended to read:

790.01. This article applies to reciprocal and interinsurance exchanges, Lloyds insurers, fraternal benefit societies, fraternal fire insurers, grants and annuities societies, insurers holding certificates of exemptions, motor clubs, nonprofit hospital associations, life agents, broker-agents, surplus line brokers and special lines surplus line brokers as well as all other persons engaged in the business of insurance.

SEC. 3. Section 1621 of the Insurance Code is amended to read:

1621. An insurance agent is a person authorized by and on behalf of an insurer to transact all classes of insurance, except life insurance. The term "insurance agent" as used in this chapter does not include a life agent as defined in this article.

SEC. 4. Section 1625 of the Insurance Code is amended to read:

1625. A fire and casualty licensee is a person authorized to act as an insurance agent, broker, or solicitor, and a fire and casualty broker-agent license is a license so to act.

SEC. 5. Section 1626 of the Insurance Code is repealed.

SEC. 6. Section 1626 is added to the Insurance Code, to read:

1626. A life licensee is a person authorized by and on behalf of a life, disability, or life and disability insurer to transact life, disability, or life and disability insurance, and a life agent license is a license so to act.

SEC. 7. Section 1627 of the Insurance Code is amended to read:

1627. A license is a permit to act in the capacity specified therein. A person licensed is the holder of the license. In case of a license to act as a life agent, or fire and casualty broker-agent issued to an organization, the organization is the holder thereof, but the natural person or persons named thereon are thereby permitted to exercise the agency or brokerage powers of the organization in accordance with and subject to the provisions of this chapter and other applicable law. As used in this chapter, the term "license" includes a certificate of convenience and a permanent license, and the term "persons who are licensed" includes the holders of any such certificate or the license, but these definitions and the use of those terms in this chapter shall not confer upon a certificate of convenience or any holder thereof any property right in or to the certificate, the certificate being and remaining only a temporary permit, issued as a matter of convenience, allowing the transaction of insurance without a permanent license, but within the limits, and subject to the conditions of the certificate of convenience issued and the laws applicable thereto.

SEC. 8. Section 1632 of the Insurance Code is amended to read:

1632. Unless prohibited in this article, a person otherwise eligible for a license may be authorized to act in one or more of the capacities specified in this chapter.

SEC. 9. Section 1635 of the Insurance Code is amended to read:

1635. No license is required under the provisions of this chapter for a person to act in the following capacities or to engage in the

following activities, providing no commission is paid or allowed, directly or indirectly, for acting in those capacities or engaging in those activities:

(a) The business of examining, certifying or abstracting titles to real property.

(b) The solicitation for membership in a fraternal benefit society and other activities to the extent and as described in Sections 11013 and 11102 of this code.

(c) As a salaried representative of a reciprocal or interinsurance exchange or of its attorney in fact.

(d) Employment which does not include the solicitation, negotiation or effecting of contracts of insurance and the signing of policies or other evidences of insurance.

(e) As an officer of an insurer or a salaried traveling employee of the type commonly known as a special agent or as an agency supervisor, while performing duties and exercising functions that are commonly performed by a special agent or agency supervisor, if the person engaging in the activity does not either:

(1) Effect insurance.

(2) Solicit or negotiate insurance except as a part of and in connection with the business of a fire and casualty broker-agent or life agent licensed under this chapter.

(f) As an officer or salaried representative of a life insurer if his or her activities are limited to direct technical advice and assistance to a properly licensed person and his or her activities do not include effecting insurance or soliciting or negotiating insurance except as a part of and in connection with the business of a fire and casualty broker-agent or life agent licensed under this chapter.

(g) Employment by an insurer at its home or branch office which does not include the solicitation or negotiation of insurance, and which may as part thereof include the signing of policies or other evidences of insurance.

(h) The completion or delivery of a declaration or certificate of coverage under a running inland marine insurance contract evidencing coverage thereunder and including only those negotiations as are necessary to the completion or delivery if the person performing those acts or his or her employer has an insurable interest in the risk covered by the certificate or declaration.

(i) As an employee of a licensed fire and casualty broker-agent, whose employment is one or more of the following:

(1) That of a regularly salaried administrative or clerical employee who devotes substantially all of his or her services to activities other than the solicitation of insurance from the insuring public.

(2) That of a salesperson who devotes substantially all of his or her activities to selling merchandise and whose solicitation of insurance is limited only to the quoting of a premium for insurance to be included in the purchase price covering the interest retained in the merchandise by the seller.

(j) The solicitation, negotiation or effectuation of home protection contracts by a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code in connection with his or her licensed function authorized by Section 10131 or 10131.6 of the Business and Professions Code. Neither the receipt of a payment permitted by Section 12760 nor the receipt of a benefit permitted by Section 12765 shall disqualify the recipient from the licensing exemption provided by this chapter.

SEC. 10. Section 1637 of the Insurance Code is amended to read:

1637. An organization may hold any license or licenses necessary to act in the following capacities under this chapter and no others:

(a) A license to act as a life agent.

(b) A license to act as a fire and casualty broker-agent.

SEC. 11. Section 1639 of the Insurance Code is amended to read:

1639. The following types of licenses under this chapter may be issued to nonresidents if the licensee is a resident of a jurisdiction that requires continuing education of insurance salespersons, and that jurisdiction recognizes on a reciprocal basis compliance with the requirements of continuing education of this chapter for eligibility for nonresident licenses in their jurisdiction:

(a) A fire and casualty broker-agent if the nonresident is duly licensed to transact more than one class of insurance, other than life insurance, disability insurance or life and disability insurance, under the laws of the state or province of Canada wherein he or she resides, provided the state or province does not prohibit a resident of this state from acting as an insurance agent or broker.

(b) A life agent if the nonresident is licensed in the state of his or her residence to transact life insurance and disability insurance.

The class or classes of insurance which a person is licensed to transact in the state or province of his or her residence shall be determined according to the definitions of classes of insurance in Sections 101 to 120, inclusive, of this code. A certificate under official seal and original signature from the insurance regulatory authority of the nonresident's home state or province may be accepted as evidence of the applicant's license status and the capacity or capacities in which he or she is licensed.

SEC. 12. Section 1640 of the Insurance Code is amended to read:

1640. A person authorized to act as an insurance solicitor is not eligible at the same time to act as an insurance agent or broker, and a person authorized to act as either an insurance agent or broker is not eligible at the same time to act as an insurance solicitor.

SEC. 13. Section 1644 of the Insurance Code is amended to read:

1644. A minor is not eligible for a license to act as a fire and casualty broker-agent, or a life agent.

SEC. 14. Section 1645 of the Insurance Code is repealed.

SEC. 15. Section 1647 of the Insurance Code is amended to read:

1647. Only the following natural persons are eligible to be named to exercise the agency or brokerage powers under an organization

license:

(a) Any general partner or employee of a copartnership.

(b) Any member, officer or employee of an association.

(c) Any officer or employee of a corporation.

SEC. 16. Section 1648 of the Insurance Code is amended to read:

1648. An unincorporated association or nonprofit corporation which is not the holder of a certificate of authority issued pursuant to Part 5 (commencing with Section 12140), Division 2 of this code is not eligible for a license under this chapter unless each member thereof possesses an individual license to transact each class of insurance authorized by the license or is a natural person named on the license to transact thereunder.

This section is not applicable to any nonprofit cemetery company exempt from the taxes imposed by Part 11 (commencing with Section 23001), Division 2 of the Revenue and Taxation Code under the provisions of Section 23701c of the Revenue and Taxation Code.

SEC. 17. Section 1649 of the Insurance Code is amended to read:

1649. A salaried employee or officer, exclusive of a director, of an admitted insurer, other than an insurer admitted to transact only life insurance or life and disability insurance, who is licensed as a fire and casualty broker-agent is not authorized to act as an insurance broker, except that the person is authorized to transact insurance as an insurance broker on risks not located in this state.

SEC. 18. Section 1649.5 of the Insurance Code is amended to read:

1649.5. Notwithstanding Section 1642, an insurer may own or control, whether directly or indirectly, a separate entity licensed under this chapter as a fire and casualty broker-agent or life agent as defined in Section 1621 or 1622, respectively.

SEC. 19. Section 1650 of the Insurance Code is amended to read:

1650. Every license issued under this chapter shall state thereon all the following:

(a) The name of the licensee.

(b) The capacity of the license.

(c) The conditions, if any, subject to which the license is issued.

(d) The effective date and expiration date of the license.

(e) If issued to an organization, by separate listing attached to it, the name of each natural person who is qualified to be named thereon pursuant to the provisions of Section 1628.

SEC. 20. Section 1652 of the Insurance Code is amended to read:

1652. (a) A license under this chapter shall be applied for, and renewed by the filing with the commissioner of a written application therefor. The application shall be on a form prescribed by the commissioner, which form shall prescribe the disclosure of information that will aid the commissioner in determining whether the prerequisites for the license sought have been met. The applicant shall declare, under penalty of perjury, that the contents of the application are true and correct.

(b) The forms prescribed by the commissioner other than for

renewal applications may require authenticated fingerprints of any of the following:

(1) Individual applicants.

(2) Specified partners or officers of organization applicants.

(3) The individuals who are to transact insurance for an organization applicant.

(c) The forms may require the fingerprints to be affixed to the application or to an attachment to be affixed to the application. The commissioner, in his or her discretion, may require the fingerprints on applications for any, some or all of the licenses issued pursuant to this chapter or Chapter 6 (commencing with Section 1760), 7 (commencing with Section 1800), or 8 (commencing with Section 1831), provided that as to any one such type of license the requirement is applied without discrimination to all applicants within specified classifications. The classifications may be made upon any or all of the following bases:

(1) Length of continuous residence in this state.

(2) Whether or not previously or currently licensed by the commissioner.

(3) Whether or not currently licensed by specified regulatory agencies of the State of California which require fingerprints on applications for licenses and routinely process the fingerprints for positive identification.

(4) Other reasonable criteria.

(d) The commissioner may decline to act on an incomplete or defective application until an amended application which completes the prescribed form is filed with him or her.

SEC. 21. Section 1656 of the Insurance Code is amended to read:

1656. Every application for a license filed by an organization shall contain all of the following:

(a) The names of the members, officers or employees of the applicant who may exercise the power and perform the duties under the license.

(b) An agreement by all members of the copartnership, or of an officer empowered to bind the association or corporation, that in the event the applicant is granted the license pursuant to subdivision (e) of Section 1650, only those persons named in the license will transact the insurance authorized under the license.

SEC. 22. Section 1658 of the Insurance Code is amended to read:

1658. Each application filed by a natural person for a license shall contain the residence address, the principal business address, and the mailing address of the applicant. Each application for an organization license shall contain the principal business address and the mailing address of the applicant.

SEC. 23. Section 1661 of the Insurance Code is amended to read:

1661. Whenever an organization licensed as a life agent, or a fire and casualty broker-agent desires to change, remove, or add to, the natural person or persons who are to transact insurance under authority of its license, it shall immediately file an application or

notice on a form prescribed by the commissioner with the commissioner for an endorsement changing its license accordingly. The commissioner shall require that the qualifying examination provided by this code be taken by any natural person named by the organization to exercise its agency or brokerage powers who would be required to take and pass the qualifying examination. That natural person or persons and the organization are in all other respects subject to the provisions of this chapter and the insurance laws.

SEC. 24. Section 1662 of the Insurance Code is amended to read:

1662. An applicant for a license to act as a fire and casualty broker-agent who will upon licensure be acting as an insurance broker shall, as part of his or her application, file the bond as required by this article, and, as long as so acting once licensed, shall continuously maintain the bond in force. Any authority to act as broker shall automatically terminate immediately upon there being no bond in force.

SEC. 25. Section 1665 of the Insurance Code is amended to read:

1665. The bond of a fire and casualty broker-agent shall be in the amount of five thousand dollars ($5,000). The bond shall be contingent on the accounting by the fire and casualty broker-agent to any person requesting insurance, for moneys or premiums collected by the fire and casualty broker-agent when acting as a broker for insurance other than life.

SEC. 25.5. Section 1668 of the Insurance Code is amended to read:

1668. The commissioner may deny an application for any license issued pursuant to this chapter if:

(a) The applicant is not properly qualified to perform the duties of a person holding the license applied for;

(b) The granting of the license will be against public interest;

(c) The applicant does not intend actively and in good faith to carry on as a business with the general public the transactions which would be permitted by the issuance of the license applied for;

(d) The applicant is not of good business reputation;

(e) The applicant is lacking in integrity;

(f) The applicant has been refused a professional, occupational or vocational license or had such a license suspended or revoked by any licensing authority for reasons that should preclude the granting of the license applied for;

(g) The applicant seeks the license for the purpose of avoiding or preventing the operation or enforcement of the insurance laws of this state;

(h) The applicant has knowingly or willfully made a misstatement in an application to the commissioner for a license, or in a document filed in support of such an application, or has made a false statement in testimony given under oath before the commissioner or any other person acting in his stead;

(i) The applicant has previously engaged in a fraudulent practice or act or has conducted any business in a dishonest manner;

(j) The applicant has shown incompetency or untrustworthiness in the conduct of any business, or has by commission of a wrongful act or practice in the course of any business exposed the public or those dealing with him to the danger of loss;

(k) The applicant has knowingly misrepresented the terms or effect of an insurance policy or contract;

(*l*) The applicant has failed to perform a duty expressly enjoined upon him by a provision of this code or has committed an act expressly forbidden by such a provision;

(m) The applicant has been convicted of:

(1) A felony;

(2) A misdemeanor denounced by this code or other laws regulating insurance; or

(3) A public offense having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property;

(n) The applicant has aided or abetted any person in an act or omission which would constitute grounds for the suspension, revocation or refusal of a license or certificate issued under this code to the person aided or abetted;

(o) The applicant has permitted any person in his employ to violate any provision of this code; or

(p) The applicant has violated any provision of law relating to conduct of business which could lawfully be done only under authority conferred by such license.

(q) The applicant has submitted to the commissioner a false or fraudulent certificate pursuant to subdivision (d) of Section 1749.5.

A judgment, plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

SEC. 26. Section 1671 of the Insurance Code is repealed.

SEC. 27. Section 1673 of the Insurance Code is amended to read:

1673. A person licensed as a fire and casualty broker-agent or a life agent may be authorized to transact disability insurance on behalf of any insurer which is authorized to transact disability insurance by the filing of a notice of appointment for that purpose. The authority to transact disability insurance given by an insurer to a person acting as an agent by appointment shall be effective as of the date the notice of appointment is signed by the insurer. That authority to transact shall apply to transactions occurring after that date and for the purpose of determining the insurer's liability for acts of appointed agents. The commissioner shall prescribe the forms of the notice of appointment.

SEC. 28. Section 1675 of the Insurance Code is amended to read:

1675. Except as provided in Section 1680, the following applicants who have theretofore been licensed under this code are exempt from the requirements of this article:

(a) An applicant for a license to act as a fire and casualty broker-agent who has been licensed as a fire and casualty

broker-agent or surplus line broker during any part of the license year in which the application is filed or the immediately preceding license year.

(b) An applicant for a license to act as a life agent who has been licensed as a life agent during any part of the license year in which the application is filed or the immediately preceding license year.

(c) An applicant for a license to act as travel insurance agent.

(d) An applicant specifically exempted from the particular qualifying examination requirement by other provisions of this code.

SEC. 29. Section 1685 of the Insurance Code is amended to read:

1685. The commissioner may issue to a person eligible therefor a certificate of convenience to act as any of the following:

(a) Any type of a licensee under this chapter or Chapter 6 (commencing with Section 1760), 7 (commencing with Section 1800), or Part 5 (commencing with Section 121401) of Division 2 to administer the business of a licensed person who has died or who has been declared incompetent by the judgment of a court of competent jurisdiction. That certificate of convenience may be denominated an estate certificate of convenience.

(b) Any type of a licensee under this chapter or Chapter 6 (commencing with Section 1760), 7 (commencing with Section 1800), or Part 5 (commencing with Section 121401) of Division 2 to conserve the business of a licensed natural person who enters the military service of the United States or to conserve the business of an organization under the conditions specified in Section 1697. That certificate of convenience may be denominated a military service certificate.

(c) An industrial debit collection certificate holder to transact industrial life and industrial disability insurance.

(1) "Industrial life insurance" means life insurance with an aggregate face amount sold to any one insured and in force at any one time in an amount not exceeding ten thousand dollars ($10,000); premiums are payable at least monthly; premiums are collected in person and not by mail or otherwise by the industrial debit collection certificate holder with a written receipt delivered to the insured, and the words "INDUSTRIAL LIFE POLICY" or "MONTHLY DEBIT ORDINARY" are printed on the policy as part of the descriptive matter.

(2) "Industrial disability insurance" means disability insurance with premiums payable at least monthly at a rate not greater than fifteen dollars ($15) per person, per month; premiums are collected in person and not by mail or otherwise by the industrial debit collection certificate holder with a written receipt delivered to the insured and with the words "INDUSTRIAL POLICY" printed on the policy as part of the descriptive matter.

(3) An industrial debit collection certificate holder may collect premiums on insurance policies not solicited by him or her so long as the premiums are collected in person and not by mail or otherwise by the certificate holder at least once a month and the insured is

issued a written receipt for the premium payment thereof.

(4) An industrial debit collection certificate holder shall be subject to the provisions of this code regulating the conduct of life agents.

Certificates of convenience issued pursuant to subdivision (c) may be denominated certificates of convenience pending examination.

SEC. 30. Section 1686 of the Insurance Code is amended to read:

1686. To be eligible for an estate certificate of convenience, a person must be one of the following:

(a) The executor or administrator of the estate of a deceased fire and casualty broker-agent or life agent.

(b) If no executor or administrator has been appointed, the surviving spouse or heir otherwise entitled to conduct the business of the deceased fire and casualty broker-agent or life agent.

(c) The conservator of the estate of a fire and casualty broker-agent or life agent.

SEC. 31. Section 1688 of the Insurance Code is amended to read:

1688. To be eligible for a certificate of convenience to act as an industrial debit collection certificate holder, a person must be an applicant for a permanent license to act as a life agent. An industrial debit collection certificate shall be issued only to act in the capacity for which the license is sought.

SEC. 32. Section 1689 of the Insurance Code is amended to read:

1689. (a) A person is not eligible for a certificate of convenience pending examination if the person has ever been issued in California a certificate of convenience or permanent license, nor unless appointing insurers, certify to the commissioner that the person is enrolled in and will pursue a course of study and instruction previously approved by the commissioner.

(b) In the event the applicant obtains more than one appointment, all appointing insurers shall certify that the applicant is enrolled in, and pursues, the training course. Each appointing insurer subsequently appointing the applicant shall be equally responsible for the continuation of the study and instruction.

SEC. 33. Section 1691 of the Insurance Code is amended to read:

1691. (a) Every insurer shall have an approved training program on file with the commissioner or have filed a blanket authorization to certify to enrollment in an approved course of instruction before appointing any certificate of convenience holder. No training course may be used to qualify an applicant for a certificate of convenience unless it is first approved by the commissioner. Before approving any such course the commissioner shall be satisfied that it meets all the following requirements.

(1) That it covers the fundamentals of insurance, insurance regulation, and instruction in those classes of insurance in which the applicant will be licensed.

(2) That it contains a system of examinations or progress checks whereby it can be determined whether the person is taking the course in good faith and obtaining information and training. That

examinations or progress checks shall be in writing, be completed by the certificate holder, and be kept on file in the state for a period of two years.

(b) The approval of a course of study and instruction may be withdrawn by the commissioner if he or she finds after notice and hearing that either:

(1) The course as administered does not meet the requirements for its approval.

(2) The content of the course is not then adequate to meet the requirements hereinabove set forth.

(c) Upon withdrawal of approval of the course the commissioner shall after notice and hearing forthwith call all holders of certificates of convenience who are enrolled in the course for examination and shall not issue any certificate of convenience to any person enrolled in the course until the course has been revised, resubmitted to, and reapproved by the commissioner.

SEC. 34. Section 1692.1 of the Insurance Code is amended to read:

1692.1. (a) The privilege of an insurer to certify to the enrollment of applicants in any course of study and instruction shall be automatically suspended without any action by the commissioner whenever more than 66⅔ percent of its holders of certificates of convenience during the calendar year fail to qualify for permanent licenses during a period of six months following issuance of a certificate of convenience to each such holder. Any suspension shall continue until the commissioner is satisfied that the insurer has taken adequate action to prevent a recurrence of the failure to qualify the requisite percentage of certificate of convenience holders for permanent licenses.

(b) Each insurer who has an approved training course on file with the commissioner pursuant to Section 1691 or a blanket authorization to certify enrollment in an approved course of instruction, shall keep and maintain complete records on each appointed certificate of convenience holder and shall file annually with the commissioner on or before August 15 a written report which shall contain, by type of certificate specified in Section 1685, all of the following:

(1) The number of certificate of convenience holders appointed during the preceding calendar year.

(2) The number of certificate of convenience holders who qualified for permanent licenses within the specified six-month period.

(3) The percentage of certificate of convenience holders who qualified for permanent licenses within the specified six-month period.

(c) Any such insurer who fails to report on or before August 15 or who files an incomplete report shall automatically be suspended until a complete report is filed in accordance with subdivision (b). All suspensions pursuant to this section shall commence on the final date the report is required to be filed. During any period of

suspension of the privilege the insurer or broker-agent is also prohibited from appointing any holder of a certificate of convenience appointed by another insurer. The commissioner may, after notice and hearing suspend the privilege of any parent, subsidiary, affiliate or controlled insurer to prevent avoidance of the suspension.

(d) At the time of filing the written report required by this section, an insurer which has failed to qualify the required percentage of certificate of convenience holders for permanent licenses may as a part of the report do any of the following:

(1) Furnish written evidence of mitigating relevant facts.

(2) Furnish written evidence of corrective action taken, or a written description of action proposed, which should result in future compliance with this section.

(3) Request termination of the automatic suspension for specified reasonable cause.

(4) Request that a hearing be held to determine whether the automatic suspension should be annulled or confirmed.

(e) The commissioner may after notice and hearing stay, annul, reduce, terminate or confirm the time of the automatic suspension otherwise required in this section upon a showing, satisfactory to the commissioner, that there is good cause therefor, and that corrective action has been taken to prevent a recurrence of the failure to qualify the requisite percentage of certificate of convenience holders for permanent licenses. The preventive measures shall include the establishment of procedures both to assure proper training to enable certificate holders to pass the qualifying license examination and to insure proper selection of prospective certificate holders to the end that a reasonable proportion of those selected will in good faith pursue the course of study and pass the qualifying examination.

(f) Except for subdivisions (b) and (c), this section shall not apply to an insurer during any calendar year in which the insurer appointed 25 or fewer of those certificate of convenience holders.

(g) Any hearing under this article shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein.

(h) The commissioner's power of termination of the certificate of convenience privilege pursuant to Section 1692.1 shall be exercised when 50 percent or more of the holders of certificates of convenience issued during the calendar year beginning January 1, 1978, fail to qualify for permanent licenses. That power of termination shall be exercised when 25 percent or more of the holders of certificates of convenience issued during the calendar year beginning January 1, 1979, fail to qualify for permanent licenses.

SEC. 35. Section 1693 of the Insurance Code is amended to read:

1693. An estate certificate of convenience expires upon the happening of any of the following events, whichever occurs first:

(a) Upon the filing with the commissioner of a certified copy of an order appointing an executor or administrator, if the certificate of convenience has been issued to a person other than the person so appointed executor or administrator.

(b) Upon the filing with the commissioner of a certified copy of an order appointing a new conservator of the estate of a fire and casualty broker-agent or life agent.

(c) Upon the disposal of the business of the fire and casualty broker-agent or life agent who is deceased or for whom a conservator of the estate has been appointed.

(d) Upon the expiration of one year after the death of the deceased fire and casualty broker-agent or life agent; provided, however, that if during the said year the holder of the certificate of convenience files an application for a license to act as a fire and casualty broker-agent or life agent in his or her individual capacity, then the certificate of convenience may remain in force until the holder thereof has been given an opportunity to take the qualifying examination for the license.

(e) Upon the termination of the conservatorship of the estate of the fire and casualty broker-agent or life agent.

SEC. 36. Section 1701 of the Insurance Code is repealed.

SEC. 37. Section 1703 of the Insurance Code is amended to read:

1703. Every applicant for an original license to act as a fire and casualty broker-agent, life agent, life analyst, surplus line broker, special lines surplus line broker, motor club agent, or bail agent or bail solicitor or bail permittee shall, as part of the application, endorse an authorization for disclosure to the commissioner of financial records of any fiduciary funds as defined in Section 1733, pursuant to Section 7473 of the Government Code. The authorization shall continue in force and effect for so long as the licensee continues to be licensed by the department.

SEC. 38. Section 1704 of the Insurance Code is amended to read:

1704. (a) Every applicant for a license as a life agent, a fire and casualty broker-agent to act as an insurance agent, or a travel insurance agent shall have filed on his or her behalf with the commissioner a notice of appointment to act as an agent executed by an insurer, or its authorized representative, admitted to transact one or more classes of insurance included within the scope of the license sought, appointing the applicant, upon licensing, its agent within this state. Every applicant for a license as a fire and casualty broker-agent to act as an insurance solicitor shall have filed on his or her behalf with the commissioner a notice executed by a fire and casualty broker-agent agreeing to employ the applicant and appointing the applicant, upon licensing, as the the fire and casualty broker-agent's employee within this state. Additional notices of appointment may be filed by other insurers or fire and casualty broker-agents, as the case may be, before the license is issued and thereafter as long as the license remains in force. The authority to transact insurance given to a licensee by an insurer or fire and casualty broker-agent, as the case

may be, by appointment shall be effective as of the date the notice of appointment is signed. That authority to transact shall apply to transactions occurring after that date and for the purpose of determining the insurer's or fire and casualty broker-agent's liability for acts of the appointed licensee. No notice of appointment of a life agent, fire and casualty broker-agent, or travel insurance agent shall be filed under this subdivision unless the licensee being appointed has consented to that filing. Each appointment made under this subdivision shall by its terms continue in force until:

(1) The cancellation or expiration of the license applied for or held at the time the appointment was filed.

(2) The filing of a notice of termination by the insurer or employing fire and casualty broker-agent, or by the appointed life agent, fire and casualty broker-agent, travel insurance agent, or insurance solicitor.

(b) Upon the termination of all appointments, or all endorsements naming the licensee on the license of an organization licensee, and the cancellation of the bond required pursuant to Section 1662 if acting as a broker, the permanent license shall not be canceled, but shall become inactive. It may be renewed pursuant to Section 1718. It may be reactivated at any time prior to its expiration by the filing of a new appointment pursuant to this section, Section 1707, and Section 1751.3, or the filing of a new bond pursuant to Section 1662. An inactive license shall not permit its holder to transact any insurance for which a valid, active license is required.

(c) Upon the termination of all appointments of a person licensed under a certificate of convenience, such certificate shall be canceled and shall be returned by its lawful custodian to the commissioner.

(d) A fire and casualty broker-agent appointing an insurance solicitor pursuant to this section, if a natural person, must be the holder of a permanent license to act as a fire and casualty broker-agent or the holder of a certificate of convenience so to act issued pursuant to either subdivision (a) or (b) of Section 1685. If the fire and casualty broker-agent is an organization, it must be the holder of a permanent license.

(e) The filing of an incomplete or deficient action notice with the department shall require the filing of an amended, complete action notice, together with the payment of the fee therefor specified in subdivision (n) of Section 1751.

SEC. 39. Section 1704.5 of the Insurance Code is amended to read:

1704.5. (a) Except as provided in subdivision (b), a licensed life agent may present a proposal for insurance to a prospective policyholder on behalf of a life insurer for which the life agent is not specifically appointed, and may also transmit an application for insurance to that insurer. If a policy of insurance is issued pursuant to that application, the insurer is considered to have authorized the agent to act on its behalf, and the insurer is responsible for all actions of the agent that relate to the application and policy as if the agent

had been duly appointed for the insurer. Not more than 14 days after the life agent submits an application for insurance to the insurer for which the insurer issues a policy, the insurer shall forward to the commissioner a notice of appointment of the life agent as the insurer's agent in accordance with the requirements of this article. Nothing in this section obliges an insurer to accept an application for underwriting from a life agent. Any payments made by the prospective policyholder prior to issuance of the policy shall be made only in the form of a draft, check, cashier's check, traveler's check, money order, or similar instrument made payable to the insurer to which the application is transmitted.

(b) A licensed life agent who is not specifically appointed for a particular life insurer may not (1) present a proposal to a prospective policyholder for insurance with that insurer or (2) transmit an application for insurance to that insurer if the insurer requires all its life agents to represent only that insurer or a group of affiliated insurers of which that insurer is a member or to submit risks to that insurer or group of affiliated insurers prior to submitting them to other insurers.

SEC. 40. Section 1705 of the Insurance Code is amended to read:

1705. An insurer, or employing fire and casualty broker-agent, by filing a notice of appointment on behalf of an applicant for an original license pursuant to Section 1704, and who is not then licensed pursuant to this chapter or Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800) of Part 2 of Division 1, shall be deemed by that act to have declared that:

(a) The applicant is of good reputation.

(b) The applicant is worthy of the license sought.

An insurer, or fire and casualty broker-agent, by filing a notice of appointment on behalf of an applicant for an original license to act as a life agent, fire and casualty broker-agent, or insurance solicitor, where the applicant for any reason will not be issued a certificate of convenience pending examination under Article 8 (commencing with Section 1685) of this chapter, shall be deemed to have declared that the applicant has had experience or instruction in classes of insurance, the transaction of which is authorized by the license sought, or will be given the necessary instruction within 30 days after the issuance of the license.

Should the applicant for a life agent's or a fire and casualty broker-agent's license be a copartnership, corporation, or association, the insurer filing the appointment shall be deemed to have made the declarations set forth in subdivisions (a) and (b) of this section as regards both the business organization and each natural person whose name appears in the application as one to exercise the agency powers of the license sought. The insurer shall be deemed to have made the declaration in the preceding paragraph only as regards the natural person or persons to be named on the organization's license initially.

Whenever a copartnership, corporation or association licensed as

a life agent or as a fire and casualty broker-agent files to add to any such license the name of a natural person to exercise the agency powers thereunder, the business organization shall be deemed to have made the appropriate declarations regarding the natural person, as set forth in this section, as are required of an insurer filing a notice of appointment on behalf of an applicant for an original license.

SEC. 41. Section 1707 of the Insurance Code is amended to read:

1707. Except as otherwise provided in Section 1704.5, each notice of appointment or notice of termination of appointment filed pursuant to this article shall be filed on forms prescribed by the commissioner within 10 days of appointment or termination.

SEC. 42. Section 1707.5 of the Insurance Code is amended to read:

1707.5. The commissioner in lieu of retaining in his or her files a copy of the notices of appointment or notices of termination described in Section 1707, if he or she has made entry of the facts pertaining to the appointments or terminations or the statements, including the cancellation, if any thereof, in some portion of his or her official records, may at any time thereafter destroy the documents. The commissioner's certification as to the content of such an entry shall be competent evidence of the facts therein stated for any purpose in any court or administrative action or proceeding and shall be accepted in lieu of the actual documents.

SEC. 43. Section 1711 of the Insurance Code is amended to read:

1711. For the purposes of this chapter and except as provided in this article, an organization ceases to exist as an entity eligible to hold a license:

(a) Upon dissolution of a copartnership or upon any change in membership of a copartnership.

(b) Upon the termination of an association.

(c) Upon dissolution of a corporation.

Provided, however, should a change occur in the membership of a copartnership licensed under this chapter, the surviving or continuing copartnership may continue to transact insurance under the license issued to the predecessor copartnership until action is taken by the commissioner on the application herein prescribed if the following requirements are met:

(1) The surviving or continuing copartnership within 30 days files an application on a form prescribed by the commissioner for registration of the change in membership, and pays the lawful fee therefor and, if acting as an insurance broker, furnishes the bond required under Article 5 (commencing with Section 1662).

(2) At least one person who exercised the agency or brokership powers of the predecessor copartnership continues to exercise the agency or brokership powers of the surviving or continuing copartnership.

(3) That application for registration be signed by a general partner.

SEC. 44. Section 1712 of the Insurance Code is amended to read:

1712. The termination of the existence of the license entity as provided in Section 1711, automatically terminates the right of that entity to transact insurance thereunder; except that a natural person, copartnership, association, or corporation licensed under this article, may continue to transact insurance under an existing license in either a different capacity or as a different organization or entity if a natural person is named to exercise the agency or brokerage powers of the license entity, and that natural person remains eligible to be so named, and if no substantial change in ownership and no change in control of the licensed insurance business has taken place; provided, that within 30 days following the change the person or the successor copartnership, association or corporation files a properly completed and executed application in the form prescribed by the commissioner for an appropriate license and pays the lawful fees therefor.

Nothing herein shall be construed to nullify any provision of Section 1718 except that any fee paid as required by subdivisions (a) or (b) of Section 1718 for a license not issued may be applied towards the fee for filing an application under this section.

SEC. 45. Section 1712.5 of the Insurance Code is amended to read:

1712.5. The license of an organization licensed as a fire and casualty broker-agent or life agent shall become inoperative upon the removal or termination of the last natural person named thereon, or when the last natural person is no longer eligible to be named thereon in accordance with Section 1647.

Unless the license is reactivated by the correction of all deficiencies including, if necessary, the adding of a natural person to transact insurance under the authority of the organization's license pursuant to Section 1661, the license shall not be renewed.

SEC. 46. Section 1714 of the Insurance Code is amended to read:

1714. A person shall not be permitted to take an examination for a license unless at the time of the administration thereof he or she is in compliance with subdivision (a) of Section 1704 or Section 1662.

SEC. 47. Section 1718 of the Insurance Code is amended to read:

1718. (a) Not less than 60 days before a permanent license will expire, the commissioner may mail, to the latest address appearing on his or her records, an application to the licensee to renew the license for the appropriate succeeding license term. It is the licensee's responsibility to renew whether or not a renewal notice is received. The commissioner may accept a late renewal, provided the licensee's failure to comply is due to clerical error or inadvertence on the part of the department.

(b) Application for renewal of a license may be filed on or before the expiration date. When filed under this subdivision, the fee for filing shall be as specified in Section 1750.

(c) The application for renewal of an expired license may be filed after the expiration date and until that same month and day of the

next succeeding year. The fee for a renewal application under this subdivision shall be the fee specified in subdivision (b) and a delinquent fee in the amount specified for a one-year period in Section 1750 for the filing. Each licensee shall be subject to payment of delinquent fees under this section.

SEC. 48. Section 1723 of the Insurance Code is repealed.

SEC. 49. Section 1724 of the Insurance Code is repealed.

SEC. 50. Section 1725 of the Insurance Code is amended to read:

1725. Every license to act as a fire and casualty broker-agent shall be prominently displayed by the holder thereof in his or her office in a manner whereby anyone may readily inspect it and ascertain both its currency and the capacity in which its holder is licensed to act.

SEC. 51. Section 1726 of the Insurance Code is repealed.

SEC. 52. Section 1727 of the Insurance Code is amended to read:

1727. (a) The commissioner shall, after notice and hearing, promulgate reasonable rules and regulations specifying the manner and type of records to be maintained by those licensees acting as insurance agents and brokers and the location where the records shall be kept.

(b) Every licensee acting as an insurance agent and broker shall keep the records as required by the regulations promulgated pursuant to subdivision (a).

(c) Every licensee acting as an insurance agent or broker employing a licensee in the capacity of an insurance solicitor shall keep the records required by the regulations promulgated pursuant to subdivision (a) for any insurance transacted by the insurance solicitor in the capacity of employee of the employing licensee.

SEC. 53. Section 1727.5 is added to the Insurance Code, to read:

1727.5. In addition to any records required to be kept pursuant to regulations adopted under subdivision (a) of Section 1727, a fire and casualty broker-agent shall also maintain a record of the written disclosure required by Section 1730.5.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 54. Section 1728 of the Insurance Code is amended to read:

1728. Every resident insurance fire and casualty broker-agent shall maintain a principal office in this state for the transaction of business. The address of the office shall, pursuant to Section 1658, be specified on all applications for license and renewal applications.

SEC. 55. Section 1729.5 of the Insurance Code is amended to read:

1729.5. A fire and casualty broker-agent or life agent who has a service contract with a corporation licensed under this code or who is a stockholder or member of any incorporated association or corporation organized under the Corporations Code for the purpose of providing services to fire and casualty broker-agents or life agents may use the name of such a corporation or association on any

stationery or advertisements and other written or printed matter used to identify the business of the fire and casualty broker-agent or life agent provided that the name of the fire and casualty broker-agent or life agent is clearly identified as bearing only that relationship to the corporation or association in one of the following ways:

"Representing _____;"

"A stockholder of _____;"

"Placing business through _____;"

"Using services of _____."

The use of the corporation or association name in the manner provided in this section shall not constitute such use as would mislead the public within the meaning of Section 1724.5.

SEC. 56. Section 1730.5 is added to the Insurance Code, to read:

1730.5. A fire and casualty broker-agent shall provide to all insured or applicant at the time of application or receipt of premium moneys the effective date of coverage, if known, or the circumstances under which coverage will be effective if there exists conditions precedent to coverage. This section shall apply only to coverage for personal lines of insurance, such as private passenger automobile, homeowner and renter insurance, personal liability, and individual disability and health insurance.

SEC. 56.5. Section 1731 of the Insurance Code is amended to read:

1731. A person licensed as a broker-agent shall be deemed to be acting as an insurance agent in the transaction of insurance placed with those insurers for whom a notice of appointment has been filed with the Insurance Commissioner in accordance with Section 1704 and is then in force.

SEC. 57. Section 1732 of the Insurance Code is amended to read:

1732. A person licensed as a fire and casualty broker-agent acting as an insurance broker may act as an insurance agent in collecting and transmitting premium or return premium funds and delivering policies and other documents evidencing insurance.

SEC. 58. Section 1733 of the Insurance Code is amended to read:

1733. All funds received by any person acting as an insurance agent, broker, or solicitor, life agent, life analyst, surplus line broker, special lines surplus line broker, motor club agent, bail agent, permittee, or solicitor, as premium or return premium on or under any policy of insurance or undertaking of bail, are received and held by that person in his or her fiduciary capacity. Any such person who diverts or appropriates those fiduciary funds to his or her own use is guilty of theft and punishable for theft as provided by law. Any premium which a premium financer agrees to advance pursuant to the terms of a premium finance agreement shall constitute fiduciary funds as defined in this section only if actually received by a person licensed in one or more of the capacities herein specified.

SEC. 59. Section 1735 of the Insurance Code is amended to read:

1735. As used in this section a managing general agent is a

licensed fire and casualty broker-agent or a life agent who, (a) has a written management contract and an appointment on file with the commissioner in accordance with Section 1704, which appointment is then in force, with one or more admitted insurers covering business transacted by the insurer in a substantial portion of the State of California; (b) under the contract manages the transaction of either all or one or more of the classes of insurance written by those insurers in that territory or the transactions therein by those insurers under a specified fictitious underwriter's name; (c) has the power to appoint, supervise and terminate the appointment of local agents in that territory; (d) has the power to accept or decline risks; and (f) collects premium moneys from producing broker-agents and remits those moneys to those insurers pursuant to the account current system.

Any such managing general agent shall, with respect to any principals for whom fiduciary funds are held, comply with Section 1734.

SEC. 60. Section 1735.5 of the Insurance Code is amended to read:

1735.5. A fire and casualty broker-agent or surplus line broker may offset funds due an insured for return premiums on any policy against amounts due him or her from the same insured for unpaid premiums on the same or any other policy. Any insurer may pay return premiums to any fire and casualty broker-agent for that purpose. This section shall not invalidate an assignment of return premium made concurrently with policy issuance as security for financing that premium, nor the right of the assignee, or his or her assign, to enforce the assignment as a prior claim.

SEC. 61. Section 1739 of the Insurance Code is amended to read:

1739. Where a permanent license is held by an organization both the organization itself and any natural persons named thereon shall, for the purposes of this article, be deemed to be the holders thereof. If that natural person commits any act or fails to perform any duty which is a ground for suspension or revocation of the license held by the organization, that action may be taken against the organization. If any natural person named under an organization license commits any act or fails to perform any duty which is a ground for the suspension or revocation of any license held by the organization, the commissioner may suspend or revoke the license of the organization, or the license of the natural person, or may take all of those steps.

SEC. 62. Section 1745 of the Insurance Code is amended to read:

1745. A first failure to keep or maintain the books and records required under Section 1727 may be considered by the commissioner to be a minor offense if committed by a licensee described in Section 1746 and the commissioner may, in lieu of notice and hearing referred to in Section 1738, take disciplinary proceedings and action as set forth in Section 1746.

SEC. 63. Section 1746 of the Insurance Code is amended to read:

1746. If the commissioner has been informed and believes that a

licensed fire and casualty broker-agent or life agent has committed any offense referred to in Section 1745, the commissioner may, without prior notice or hearing, mail to that licensee at his or her last address filed with the commissioner an order reprimanding the licensee. That order shall specify the statute violated and the time of the violation; and shall further state that the order shall become effective commencing at a date specified therein not less than 15 days from the date of mailing, unless the licensee, prior to the effective date, advises the commissioner in writing that formal notice and hearing are requested, in which case the order shall become void and of no effect, and the commissioner may initiate proceedings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 64. Section 1747 of the Insurance Code is amended to read:

1747. Whenever the commissioner may determine or have good cause to believe that any fire and casualty broker-agent has failed to keep or maintain the records required by Sections 1727 and 1727.5, in connection with or in lieu of any other disciplinary action against the license of the licensee, the commissioner may issue his or her order requiring the licensee to establish and currently complete those records within sixty (60) days from the date of the order. When the order is given in lieu of other disciplinary action, notice of the order may be given by certified mail addressed to the office of the licensee. Failure of the licensee to comply with the order within the time specified therein shall be grounds for the suspension or revocation of the license or licenses of the licensee, and the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 65. Article 13.5 (commencing with Section 1749) is added to Chapter 5 of Part 2 of Division 1 of the Insurance Code, to read:

Article 13.5. Prelicensing and Continuing Education

1749. On and after January 1, 1992, the department shall require all new applicants for license as a fire and casualty broker-agent or as a life agent to meet prelicensing education standards as follows:

(a) Require a minimum of 40 hours of prelicensing classroom study as a prerequisite to qualification for a fire and casualty broker-agent license. The curriculum shall be certified by the department. Any additions to the minimum requirements provided by this section shall be approved by the curriculum board pursuant to Section 1749.1 and certified by the department.

(b) Require a minimum of 40 hours of prelicensing classroom study as a prerequisite for qualification for a life agent license. The curriculum shall be certified by the department. Any additions to the minimum requirements provided by this section shall be approved by the curriculum board pursuant to Section 1749.1 and certified by the department.

(c) In addition to the 40 hours prelicensing education required to qualify for a license as a broker-agent or life agent, the department shall require 12 hours of study on ethics and this code. Where an applicant seeks a license for both the broker-agent license and the life license, the applicant shall only be required to complete one 12-hour course on ethics and this code.

(d) This section shall not apply to persons licensed as of December 31, 1991.

1749.1. The commissioner shall appoint a curriculum board consisting of representatives of insurance agents, brokers, and life agents trade associations and representatives of insurance companies and consumer groups to develop the prelicensing and continuing education curriculum, including a list of preapproved courses of study, including courses of study for professional designations which would satisfy the requirements of this article. The curriculum board shall develop or recommend courses of study covering all lines of insurance to be sold under each license including, but not limited to, any special products such as long-term care insurance, Medi-gap policies, disability insurance products, and course study on ethics and pertinent sections of this code. The curriculum developed or recommended by the board shall be submitted to the commissioner for approval.

This section shall become operative on January 1, 1991.

1749.2. The purpose of Sections 1749.3 to 1749.6, inclusive, is to establish requirements and standards for continuing education programs for persons licensed as fire and casualty broker-agents and life agents.

Sections 1749.3 to 1749.6, inclusive, shall not apply to either (a) those persons holding resident licenses for any kind or kinds of insurance for which an examination is not required by the law of this state, nor shall it apply to any such limited or restricted license as the commissioner may exempt or (b) licensed nonresident agents or brokers who comply with the continuing education requirements of their state of residence.

1749.3. Licensed fire and casualty broker-agents and life agents shall annually satisfactorily complete those courses, programs of instruction, or seminars that may be approved by the commissioner in the minimum number of classroom hours as follows:

(a) During each of the first four 12-month periods following the date of its original issue satisfactorily complete courses or programs of instruction or attend seminars equivalent to a minimum of 25 classroom hours of instruction, with a maximum of 100 accumulated classroom hours for the 48-month period.

(b) Any licensee who has complied with subdivision (a), shall for each 12-month period satisfactorily complete courses or programs of instruction or attend seminars equivalent to 15 classroom hours of instruction.

(c) The requirements of this section shall apply retroactively to all licensees covered by this article.

1749.4. The courses or programs of instruction successfully completed that shall be deemed to meet the standards for continuing educational requirements, and the number of classroom hours for which they are equivalent, are as follows:

(a) Any part of the Life Underwriter Training Council Life Course Curriculum totaling 50 hours, including the health course totaling 26 hours.

(b) Any part of the American College CLU diploma curriculum totaling 30 hours.

(c) Any part of the Insurance Institute of America's program in general insurance totaling 25 hours.

(d) Any part of the American Institute of Property and Liability Underwriters' Chartered Property Casualty Underwriter (CPCU) professional designation program totaling 30 hours.

(e) Any part of the Certified Insurance Counselor program totaling 25 hours.

(f) Any insurance-related course approved by the curriculum board and the commissioner taught by an accredited college or university per credit hour granted totaling 15 hours.

(g) Any course or program of instruction or seminar developed or sponsored by an authorized insurer, recognized agents' association, or insurance trade association, or any independent program of instruction shall, subject to the approval of the curriculum board and the commissioner, qualify for the equivalency of the number of classroom hours assigned thereto by the commissioner.

(h) Any correspondence course approved by the curriculum board and the commissioner shall qualify for the equivalency of the number of classroom hours assigned thereto by the commissioner.

1749.5. (a) A person teaching any approved course of instruction or lecturing at any approved seminar shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing that course, seminar, or program.

(b) Excess classroom hours accumulated during any one-year period may be carried forward to the next year.

(c) For good cause shown, the commissioner may grant an extension of time during which the requirements imposed by this article may be completed, but that extension of time shall not exceed the period of one year.

(d) Every person subject to this article shall furnish, in a form satisfactory to the commissioner, written certification as to the courses, programs, or seminars of instruction taken and successfully completed by that person.

1749.6. Any person failing to meet the requirements imposed by Section 1749.3 and who has not been granted an extension of time within which to comply by the commissioner shall have his or her license automatically terminated until the time that the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements of this article and all other laws applicable thereto. Where a person cannot perform the

requirements of this article due to a disability or inactivity due to special circumstances, the commissioner shall provide a procedure for the person to place his or her license on inactive status until the time that the person demonstrates to the satisfaction of the commissioner that he or she has complied with or made up all of the requirements of this article for the period of disability or inactivity.

1749.7. The commissioner may, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt reasonable rules and regulations necessary for the convenient administration of this article.

1749.8. This article shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enactd statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 66. Section 1750 of the Insurance Code is amended to read:

1750. The commissioner shall require in advance as a fee for filing application for the hereinafter designated licenses, renewals thereof, or changes in outstanding licenses, an amount calculated as set forth herein. The fee is determined by multiplying the number of license years in the period of the license applied for or the remaining period of an existing license counting any initial fractional license year of that period as one year for that purpose, as follows:

(a) Fire and casualty broker-agent, fifty-six dollars ($56).

(b) Life agent, resident, forty-eight dollars ($48).

(c) Life agent, nonresident, fifty-three dollars ($53).

SEC. 67. Section 1750.5 of the Insurance Code is amended to read:

1750.5. The fee for filing application for a nonresident fire and casualty broker-agent license shall be that established in Section 1750 for a resident fire and casualty broker-agent, except that if the applicant's state, commonwealth or Canadian province of residence has fees for any nonresident insurance license greater than for a like resident license the fee for filing an application for a nonresident fire and casualty broker-agent license shall not be less than the amount a California resident would be required to pay to obtain a like license for a like term in the applicant's state, commonwealth or Canadian province of residence.

Where another state, commonwealth or Canadian province by statute imposes any restrictions or limitations on a California resident, the restrictions or limitations shall apply to a resident of that state, commonwealth or Canadian province in California. This section shall not be construed to require a countersignature on a policy or contract, or the payment of a countersignature fee.

SEC. 68. Section 1751 of the Insurance Code is amended to read:

1751. The commissioner shall require, in advance, a fee for filing the following documents:

(a) Application for registration of change in membership of a copartnership licensed as any of the following:

(1) Fire and casualty broker-agent, fifty-six dollars ($56).

(2) Life agent, resident, forty-eight dollars ($48).

(3) Life agent, nonresident, fifty-three dollars ($53).

(b) Notice for adding or removing from any life agent's, fire and casualty broker-agent license issued to an organization the name of any natural person named thereon, sixteen dollars ($16).

(c) First amendment to an application, eight dollars ($8); a second and each subsequent amendment to an application, sixteen dollars ($16).

(d) Original application to be given the qualifying examination for a license of a fire and casualty licensee, twenty-seven dollars ($27) for each person to be examined.

(e) Original application to be given the qualifying examination for a license of a life licensee, twenty-seven dollars ($27) for each person to be examined.

(f) Application for reexamination for any of the licenses mentioned in this section, twenty-seven dollars ($27) for each person to be reexamined.

(g) Application which includes a request for a certificate of convenience pursuant to Article 8 (commencing with Section 1685), twenty dollars ($20) in addition to, and not in lieu of, fees otherwise required.

(h) Application or request for approval of true or fictitious name pursuant to Section 1724.5 thirty dollars ($30), except that there shall be no fee when the name is contained in an original application.

(i) "A ratification of appointments of agents" whereby the surviving insurer in a merger or consolidation assumes responsibility for all agents then lawfully appointed for one of the constituent insurers and makes each its agent, one hundred three dollars ($103).

(j) An application or request for approval of:

(1) A training course pursuant to Section 1691, except when filed by a degree-conferring college or university, a public educational institution, or by a private nonprofit educational institution, one hundred three dollars ($103).

(2) An arrangement whereby an insurer may qualify certificate of convenience holders pursuant to Section 1691 by means of an approved course given on the insurer's behalf by a school or organization other than itself, fifty-five dollars ($55).

(k) A bond, pursuant to Article 5 (commencing with Section 1662) or Section 1760.5 or 1765, except when the bond constitutes part of an original application filing, sixteen dollars ($16).

(*l*) An application or request for a copy of, or a duplicate license, issued pursuant to Chapter 5 (commencing with Section 1621), 6 (commencing with Section 1760), 7 (commencing with Section 1800), or 8 (commencing with Section 1831) or Sections 12280 and 12280.2, sixteen dollars ($16).

(m) An application or request for clearance and cancellation notice of a current licensee of record, sixteen dollars ($16).

(n) An amended action notice pursuant to subdivision (e) of Section 1704, five dollars ($5).

SEC. 69. Section 1751.3 of the Insurance Code is amended to

read:

1751.3. The commissioner shall require sixteen dollars ($16) in advance as a fee for filing each notice of appointment or each notice of termination pursuant to Section 1707 of any of the following:

(a) A fire and casualty broker-agent to act as an insurance agent.

(b) A life agent.

(c) A travel insurance agent.

(d) A fire and casualty broker-agent to act as an insurance solicitor.

SEC. 70. Section 1751.6 of the Insurance Code is amended to read:

1751.6. The commissioner may prepare a list of all currently licensed producers. All those lists shall be at the expense of the insurer, organization, or person requesting this service, except that special lists which are a part of the regulatory responsibility of the department may be at the expense of the state in the discretion of the commissioner. The costs and expenses of all those lists shall be paid from the support appropriation for the Department of Insurance current at the time of the preparation of the list but shall be charged to and collected from the insurer, organization, or person requesting the list. All list preparation expense moneys collected by the Department of Insurance under the provisions of this section are hereby appropriated to the department and shall be deposited in the Insurance Fund to the credit of the support appropriation for the department current at the time of the deposit. If any such insurer, organization, or person refuses to pay those costs and expenses promptly when due, the commissioner may refuse to issue its certificate of authority, certificate of exemption, or license, as the case may be, and may revoke any existing certificate of authority, certificate of exemption, or license.

SEC. 71. Section 1755 of the Insurance Code is amended to read:

1755. That license shall be applied for and renewed in the same manner as is provided in this chapter for a licensee to act as a fire and casualty broker-agent, except that an applicant for a limited license as a travel insurance agent need not pass a qualifying examination, and that the fee for filing an application shall be sixteen dollars ($16) for each year or fraction thereof in the term of the license applied for.

SEC. 72. Section 1758.1 of the Insurance Code is amended to read:

1758.1. For the purpose of making provision for the issuance of policies or contracts authorized by Article 5 (commencing with Section 10506) of Chapter 5 of Division 2, the commissioner may grant authority to transact variable contracts to a person or a natural person named on a license of an organization licensed as a life agent which is appointed by an admitted insurer which is required to register itself or to register a separate account or fund with the United States Securities and Exchange Commission under the Federal Investment Company Act of 1940, or to register its variable

policies or contracts with the Securities and Exchange Commission under the Federal Securities Act of 1933, and has complied with that requirement.

No person shall act as an agent of the insurer in the transaction of the policies or contracts unless he or she holds a valid authority under this article.

SEC. 73. Section 1758.2 of the Insurance Code is amended to read:

1758.2. Any authority granted pursuant to the provisions of this article shall be effective only while a permanent underlying life agent's license remains in full force and effect. The provisions of subdivision (b) of Section 1704 relating to the inactivation and reactivation of the underlying life agent's license, and the renewal thereof, shall apply to any authority issued pursuant to this article, except that references to agency appointments and terminations shall relate only to the underlying life agent's license. Such authority may be revoked, suspended, or otherwise affected for the same reasons and by the same procedures as a life agent's license.

SEC. 74. Section 1758.3 of the Insurance Code is amended to read:

1758.3. The commissioner shall not grant authority to transact variable contracts unless the life agent or applicant furnishes proof that he or she is registered to sell securities in accordance with the rules of the United States Securities and Exchange Commission or the National Association of Securities Dealers, and has, within the 12 months' period next preceding the date of issue of the authority, taken and passed a written qualifying examination as prescribed by the commissioner.

SEC. 75. Section 1758.4 of the Insurance Code is repealed.

SEC. 76. The Auditor General shall report to the Legislature on the effect of this act on or before March 31, 1994.

SEC. 77. Unless otherwise specified in this act, the provisions of this act shall become operative on January 1, 1992.

CHAPTER 1421

An act relating to world trade, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 28, 1990.]

I am deleting the $100,000 appropriation contained in Section 2 of Senate Bill No. 2714.

This bill would appropriate $100,000 from the General Fund to the World Trade Commission (WTC) to develop a computerized database of agricultural trade barriers and report to the Legislature on its findings and recommendations by June 30, 1991.

The demands placed on budget resources require all of us to set priorities. With legislation I will be signing and the budget enacted in July 1990, more than $54 billion in state funds will be appropriated this fiscal year. This amount is more than adequate

to provide the necessary essential services provided for by State Government. It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1991–92. Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects. The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Senate Bill No. 2714.

GEORGE DEUKMEJIAN, Governor

The people of the State of California do enact as follows:

SECTION 1. (a) The California State World Trade Commission, in compliance with all applicable competitive bidding procedures concerning the award of public contracts, shall select and hire a consultant, institution, or other public or private individual or entity possessing the expertise required to implement this act, to review, analyze, catalogue, and develop a computerized data base of all significant agricultural trade barriers, including nontariff and institutional trade barriers, imposed by nations which are contracting parties to, acceded provisionally to, or under de facto application of, the Articles of the General Agreement on Tariffs and Trade (GATT). The California State World Trade Commission, after consultation with the chairpersons of the Joint Committee on International Trade, may identify additional nations to be researched and included in this data base.

(b) The identification of specific products, nations, and states to be included in this study shall be made by the commission and shall be based on products having significant export potential in the 1990's for California agriculture.

(c) The contractor shall be required to provide a report that is useful to policymakers, merchants, bankers, forwarders, shippers, and others to make California exporters well informed on trade barriers to exports. The consultant or institution shall also prepare a catalogue of information, identifying sources and methods of development used in the preparation of the data base. Additionally, the consultant or institution shall prepare the information so that it can be used in conjunction with the Advanced Technology Information Network System located at the California State University, Fresno, which is accessible through the California State University Data Network, and is available without charge to registered users throughout California. The contractor shall also be required to update the information in the data base, in a regular and timely manner, for not less than 24 months, to be specified by the commission. The commission shall, not later than June 30, 1991, report all of its findings and recommendations made pursuant to this act, including information on how it plans to monitor agricultural trade barriers in the future with a computer data base service which can render current information to any California agricultural exporter, to the Governor, the Lieutenant Governor, the Secretary

of State, the Senate Committee on Rules, and the Speaker of the Assembly.

SEC. 2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the California State World Trade Commission in order to contract with a consultant, institution, or other public or private individual or entity to implement Section 1 of this act. This appropriation may be used by the commission to contract separately with all of the following:

(a) A consultant, institution, or other public or private individual or entity, for development of the data base.

(b) The Advanced Technology Information Network System at the California State University, Fresno, for expenses incurred in operating the data base and computers.

(c) A consultant, institution, or other public or private individual or entity, for regularly updating the trade barriers information contained in the data base.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable the state to better determine methods of overcoming agricultural trade barriers that are presently impacting all segments of state agriculture and affecting the employment and welfare of the entire agricultural industry as rapidly as possible, it is necessary for this act to take effect immediately.

CHAPTER 1422

An act to amend Sections 1101, 1105, 1111, 1122, 1127, 1128, 1130, 1132, 1133, 1137, 1140, 1142, 1150, 1156, 1157, 1158, 1170, 1170.3, 1171, 1176, 1177, 1179, and 1191 of, to amend and renumber Section 1141.5 of, to add Section 1156.5 to, and to add and repeal Section 1201.6 of, and to repeal Sections 1141, 1143, and 1193 of, the Harbors and Navigation Code, relating to pilots, and making an appropriation therefor.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1101 of the Harbors and Navigation Code is amended to read:

1101. The Legislature further finds and declares:

(a) The maritime industry is necessary for the continued economic well-being and cultural development of all California citizens.

(b) The Bays of San Francisco, San Pablo, and Suisun provide a

vital transportation route for the maritime industry.

(c) The increase in vessel size and traffic, and the increase in cargoes carried in bulk, particularly oil and gas and hazardous chemicals, create substantial hazards to the life, property, and values associated with the environment of such waters.

(d) The federal government has long adopted the policy of providing minimum standards which assure port and waterways safety while at the same time encouraging state control over pilot qualifications and licensing.

(e) A program of pilot regulation and licensing is necessary in order to ascertain and guarantee the qualifications, fitness, and reliability of qualified personnel who can provide safe pilotage of vessels entering and using the Bays of San Francisco, San Pablo, and Suisun.

(f) The need to assure safe and pollution-free waterborne commerce requires that pilotage services be employed in the confined and crowded waters of those bays.

(g) Bar pilotage in the Bays of San Francisco, San Pablo, and Suisun has continuously been regulated by a single-purpose state board since 1850, and that regulation and licensing should be continued.

SEC. 2. Section 1105 of the Harbors and Navigation Code is amended to read:

1105. This division applies to pilots for San Francisco, San Pablo, and Suisun Bays.

SEC. 3. Section 1111 of the Harbors and Navigation Code is amended to read:

1111. "Board" means the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun.

SEC. 4. Section 1122 of the Harbors and Navigation Code is amended to read:

1122. (a) A pilot carried to sea against the pilot's will, or unnecessarily detained on board a vessel when a pilot vessel is in attendance to receive the pilot, shall receive six hundred dollars ($600) per day while so carried to sea or detained, plus reimbursement for any expenses incurred by the pilot in returning to the pilot station.

(b) The owner, operator, and agents of the detaining vessel are jointly and severally liable for paying the amount specified in subdivision (a).

SEC. 5. Section 1127 of the Harbors and Navigation Code is amended to read:

1127. Every vessel sailing under a coastwise license or appropriately endorsed registry and engaged in the coasting trade between any port of the Bays of San Francisco, San Pablo, and Suisun, and any other port of the United States, is exempt from all pilotage charges unless a pilot is actually employed. Every foreign vessel and every vessel bound to or from a foreign port, and every vessel sailing under a register between any port of the Bays of San Francisco, San

Pablo, and Suisun and any other port of the United States, is liable for pilotage.

SEC. 6. Section 1128 of the Harbors and Navigation Code is amended to read:

1128. Any nonself-propelled vessel in tow of a tug within the Bay of San Francisco, San Pablo, or Suisun, or between those bays, is exempt from pilotage charges unless a pilot is actually employed.

SEC. 7. Section 1130 of the Harbors and Navigation Code is amended to read:

1130. The pilots shall appoint one of their members to act as president to carry out the orders of the board, other applicable laws, and otherwise administer the affairs of the pilots. The appointment shall be subject to the confirmation of the board.

SEC. 8. Section 1132 of the Harbors and Navigation Code is amended to read:

1132. Every pilot in charge of a vessel arriving in the Bays of San Francisco, San Pablo, or Suisun, shall safely moor the vessel in place and position as directed by the master of the vessel, consistent with safe navigation and not contrary to law.

SEC. 9. Section 1133 of the Harbors and Navigation Code is amended to read:

1133. Every pilot in charge of a vessel leaving the Bays of San Francisco, San Pablo, and Suisun shall pilot it from its point of departure to a point beyond the San Francisco Bar.

SEC. 10. Section 1137 of the Harbors and Navigation Code is amended to read:

1137. (a) The account shall show all of the following:

(1) The name of each vessel piloted.

(2) The name of the vessel's master.

(3) The name of each vessel for which pilotage has been charged or collected.

(4) The amount charged to or collected from each.

(5) Any rebates made and allowed and for what amounts.

(6) Where the vessel is registered.

(7) The depth of each vessel's draft and its highest gross tonnage.

(8) Whether the vessel was inward or outward bound.

(b) The secretary of the board shall record the accounts in full detail in a book prepared for that purpose. The account book is a public record.

SEC. 11. Section 1140 of the Harbors and Navigation Code is amended to read:

1140. (a) No person shall hold both a pilot license and an inland pilot license concurrently.

(b) It is the intent of the Legislature to provide for a unified system of state regulated pilotage for the Bays of San Francisco, San Pablo, and Suisun.

(c) The Legislature finds and declares that unified pilotage will be beneficial to the safety of people, vessels, and property using those bays and tributaries.

(d) The Legislature further finds and declares that unified systems of regulated pilotage are common to the ports of the world and are most familiar to, and best able to serve, both foreign and domestic vessels.

SEC. 12. Section 1141 of the Harbors and Navigation Code is repealed.

SEC. 13. Section 1141.5 of the Harbors and Navigation Code is amended and renumbered to read:

1141. (a) Each pilot license shall be valid for a period of one year and shall be renewed upon application and successful completion of the physical examination required by Section 1176.

(b) A pilot license shall not be renewed if the pilot possessing the license does not actively pilot vessels for any consecutive period of one year, unless the board determines the pilot is qualified and makes one of the following findings:

(1) The pilot has presented satisfactory proof of medical disability during that period.

(2) The pilot has been serving as president under Section 1130.

(c) A pilot licensee shall at all times hold an active and proper license to pilot vessels on the waters on which the pilot operates.

(d) The board may revoke or suspend the license of any pilot who does not use proper equipment maintained exclusively for pilotage or who operates on territorial waters not described in the license.

SEC. 14. Section 1142 of the Harbors and Navigation Code is amended to read:

1142. (a) Each existing inland pilot license shall be valid for a period of one year and may be renewed upon application and the applicant's passing of the physical examination required in Section 1176.

(b) An existing inland pilot license shall not be renewed if the inland pilot possessing the license does not actively pilot vessels for any consecutive period of one year, unless the board determines that the inland pilot is qualified and has presented satisfactory proof of medical disability during that period.

(c) An inland pilot shall at all times hold an active and proper license to pilot vessels on the waters on which the pilot operates.

(d) The board may revoke or suspend the license of any inland pilot who does not use proper equipment or who operates on territorial waters not described in the license. The suspension or revocation of licenses under this section is governed by Article 2 (commencing with Section 1180) of Chapter 4.

SEC. 15. Section 1143 of the Harbors and Navigation Code is repealed.

SEC. 16. Section 1150 of the Harbors and Navigation Code is amended to read:

1150. (a) There is in the state government a Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun, consisting of seven members appointed by the Governor, with the consent of the Senate, as follows:

(1) Two members shall be pilots licensed pursuant to this division.

(2) Two members shall represent the industry and shall be persons currently engaged as owners, officers, directors, employees, or representatives of firms, or associations of firms, which are substantial users of pilotage service in San Francisco, San Pablo, and Suisun Bays, one of whom shall be engaged in the field of tanker company operations, and one of whom shall be engaged in dry cargo operations. The board of directors of a regional maritime trade association controlled by West Coast vessel operators which specifically represents the owners and operators of vessels or barges engaged in transportation by water of cargo or passengers from or to the Pacific area of the United States shall nominate, rank, and submit to the Governor the names of three persons for each category of industry member to be appointed.

(3) Three members shall be public members and shall be appointed by the Governor. Any person may serve as a public member unless otherwise prohibited by law.

(4) Notwithstanding any other provision of law, nothing contained in this chapter shall prohibit the Governor from notifying the respective nominating authorities identified in paragraph (2) that persons nominated are unacceptable for appointment. Following that notification, the nominating authority shall submit a new list of nominees to the Governor, naming three persons for each board vacancy, none of which were previously nominated, from which the Governor may make the appointment. This process shall be continued until persons nominated by the nominating authority and satisfactory to the Governor have been appointed.

(b) Each of the members appointed pursuant to subdivision (a) shall be appointed for a four-year term, and shall not be appointed for more than two terms. Vacancies on the board for both expired and unexpired terms shall be filled by the appointing power in the manner prescribed by subdivision (a).

(c) The board members serving on January 1, 1985, shall continue to serve as the public members on the board and shall select one board member to serve a two-year term, one board member to serve a three-year term, and one board member to serve a four-year term. The board member selected for the initial two-year term may serve two additional four-year terms, if appointed pursuant to this section, and the remaining board members may only serve one additional four-year term, if appointed pursuant to this section.

(d) A quorum of the board members consists of four members. All actions of the board shall require the vote of four members, a quorum being present.

SEC. 17. Section 1156 of the Harbors and Navigation Code is amended to read:

1156. The board may appoint, fix the compensation of, and from time to time adjust the compensation of, an executive director, an administrative assistant/secretary, and such other employees as may be necessary.

SEC. 17.3. Section 1156.5 is added to the Harbors and Navigation Code, to read:

1156.5. (a) The executive director shall serve at the pleasure of the board and shall be under the direct supervision of the board. The board may delegate to the executive director any of the following functions:

(1) The administration of personnel employed by the board, in accordance with the civil service laws.

(2) To serve as the treasurer of the board and keep, maintain, and provide the board with all statements of accounts, records of receipts, and disbursements of the board in accordance with law.

(3) The issuance and countersigning of licenses, which shall also be signed by the president of the board.

(4) The administration of matters and the maintenance of files pertaining to actions taken against licenses issued by the board.

(5) The investigation of and reporting on a navigational incident or other matter for which a license issued by the board may be revoked or suspended.

(6) To work with the pilot evaluation committee to recommend to the board improvements in the pilot training program.

(7) Under the direction of the board, to coordinate with other state and federal agencies charged with protecting the environment and with the oil and hazardous chemical shipping industry.

(8) Any other function, task, or duty that may reasonably be assigned by the president of the board, including, but not limited to, performing research and obtaining documents and other evidence for board activities, including rate hearings.

(b) The board shall approve all expenditures made by the executive director in carrying out his or her duties.

(c) The executive director shall not also serve as a member of the board nor as a member of the pilots or inland pilots nor may he or she be otherwise currently employed in the maritime industry during his or her term of office.

(d) The term of office to which the executive director is appointed is five years. The first person appointed to the position of executive director shall be initially appointed by a vote of at least four members of the board. Following the initial appointment, the executive director, and subsequent executive directors, may be appointed, reappointed, or removed from office only by a vote of at least four members of the board, including at least one industry member, one pilot member, and one public member.

SEC. 17.7. Section 1157 of the Harbors and Navigation Code is amended to read:

1157. The administrative assistant/secretary shall work under the direct supervision of the executive director and shall keep a written record of all the board's proceedings and acts, and shall keep a register of all pilots appointed, their residence, and the date of each license. In addition, he or she shall perform any additional clerical, administrative, and other duties that may reasonably be required by

the executive director.

SEC. 18. Section 1158 of the Harbors and Navigation Code is amended to read:

1158. The public members, the executive director, and the secretary of the board shall not have any interest in any pilot vessel or tug, or in the earnings thereof, except for the compensation provided in this chapter.

SEC. 19. Section 1170 of the Harbors and Navigation Code is amended to read:

1170. The board shall appoint and license the number of pilots which is sufficient to carry out the purposes of this division.

SEC. 20. Section 1170.3 of the Harbors and Navigation Code is amended to read:

1170.3. (a) The board shall adopt, by regulation, a pilot's conflict-of-interest code which shall include, but not be limited to, a provision specifying that a pilot shall not have any interest in, or derive any income from, any tugboat in operation on the Bays of San Francisco, San Pablo, and Suisun. This requirement of divestiture does not apply to the ownership of barges and vessels similar to barges.

(b) The conflict-of-interest code shall not prohibit the ownership of stock in any corporation registered on a national securities exchange, pursuant to Section 78f of Title 15 of the United States Code, which may own tugboats in operation on the Bays of San Francisco, San Pablo, and Suisun.

SEC. 21. Section 1171 of the Harbors and Navigation Code is amended to read:

1171. (a) The board shall have the sole authority to determine the qualifications for obtaining a license as a pilot or inland pilot pursuant to this division, determine who shall have such a license, and issue the license.

(b) All persons possessing a valid state pilot's license on January 1, 1985, are hereby licensed as if the license was granted by the board.

SEC. 22. Section 1176 of the Harbors and Navigation Code is amended to read:

1176. Pilots and inland pilots shall undergo physical examinations in accordance with standards prescribed by the board in conjuction with the renewal of their license. The examination shall designate that each pilot or inland pilot is fit to peform his or her duties as a pilot.

SEC. 23. Section 1177 of the Harbors and Navigation Code is amended to read:

1177. (a) On or before December 31, 1988, all pilots licensed pursuant to this division shall have and maintain proper federal endorsements allowing them to pilot on the high seas and on all waters of the Bays of San Francisco, San Pablo, and Suisun, excluding the San Joaquin River and the Sacramento deep water ship channel.

(b) Notwithstanding subdivision (a), all pilots issued original licenses pursuant to this division after December 31, 1987, shall have

proper federal endorsements allowing them to pilot on the high seas and on all waters of the Bays of San Francisco, San Pablo, and Suisun, including the San Joaquin River and the Sacramento deep water ship channel.

SEC. 24. Section 1179 of the Harbors and Navigation Code is amended to read:

1179. Notwithstanding any other provision of this division, any shipping company which regularly employed its employees, or expressed its intent to the board to use its employees, for piloting vessels on the Bays of San Francisco, San Pablo, and Suisun on or before July 1, 1983, may employ and use its employees in that manner in lieu of pilots provided under this chapter. However, this use of employees as pilots on foreign flag vessels shall be limited to five vessel calls per year for those shipping companies that have only expressed their intent to use their employees in lieu of pilots. This limitation shall not apply to those shipping companies which regularly employed their employees for piloting vessels prior to July 1, 1983.

SEC. 25. Section 1191 of the Harbors and Navigation Code is amended to read:

1191. (a) The board shall, pursuant to Chapter 6 (commencing with Section 1200), recommend that the Legislature, by statute, adopt a schedule of pilotage rates providing fair and reasonable return to pilots and inland pilots engaged in ship movements or special operations where rates for those movements or operations are not specified in Section 1190.

(b) Every vessel using pilots and inland pilots for ship movements or special operations which do not constitute bar pilotage shall pay the rate specified in the schedule of pilotage rates adopted by the Legislature.

(c) The minimum rates charged by pilots or inland pilots for ship movements and internal operations shall be the schedule of ship pilot fees published by the San Francisco Bar Pilots on January 1, 1990.

SEC. 26. Section 1193 of the Harbors and Navigation Code is repealed.

SEC. 27. Section 1201.6 is added to the Harbors and Navigation Code, to read:

1201.6. (a) Commencing on January 1, 1991, to, and including, December 31, 1995, this section shall determine how all pilotage rate recommendations shall be made to the Legislature by the board.

(1) Any party directly affected by pilotage rates established under this chapter may petition the board for a public hearing on any of the matters set forth in Section 1200. The board shall, within 10 days, request the appointment of an administrative law judge by the Director of the Office of Administrative Hearings for the purpose of holding hearings to receive evidence relating to the issues raised in the petition. The board shall give notice of the hearings to all interested parties who have requested notification.

(2) The administrative law judge shall conduct a hearing into the issues raised in the petition and take evidence submitted by all

interested parties and shall determine the admissibility, credibility, and weight to be given to all evidence submitted. Interested parties may cross-examine witnesses who provide testimony at the hearing. The administrative law judge shall, at the conclusion of the hearing, render written findings of fact and conclusions as to whether a change in the pilotage rates are justified by the evidence and make written proposals to the board of what new pilotage rates, if any, should be adopted.

(3) Within 30 days of receipt of the administrative law judge's written findings, conclusions, and proposals for new rates, if any, the board shall hold a public hearing at which it shall determine whether to accept or reject the administrative law judge's proposals. At the conclusion of the hearing, the board shall submit to the Secretary of the Senate and the Chief Clerk of the Assembly a copy of the administrative law judge's findings, conclusions, and proposals for new rates, if any, and whether the board accepted or rejected the proposals, supported by a transcript of the proceedings before the board and before the administrative law judge. In determining whether to accept or reject the administrative law judge's findings, conclusions, and proposals for rate changes, if any, the board need not have at least one representative of industry and one representative of the pilots present, four members otherwise being present.

(4) The administrative law judge shall not receive written evidence at a public hearing held for the purpose of considering pilotage rates unless 10 or more copies of the evidence have been deposited with the board as public documents by the party proposing a rate adjustment 30 or more days prior to the date set for the commencement of the hearing.

(5) The administrative law judge shall not receive written evidence at the hearing from any party responding to the request unless 10 copies of the evidence are deposited with the board 10 or more days prior to the date set for the commencement of the hearing.

(6) Paragraphs (4) and (5) do not prohibit the introduction of evidence specifically requested by the administrative law judge or the board.

(7) Public hearings for the purpose of obtaining information and data relating to the issues raised in any petition regarding pilotage rates shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and a full record shall be kept of all evidence offered. The administrative law judge's proposals regarding new rates, if any, shall give consideration to all relevant factors including, but not limited to, those items set forth in the subdivisions (a) to (g), inclusive, of Section 1203.

(b) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

CHAPTER 1423

An act to amend Sections 1136, 1150, 1151, 1156, 1157, 1158, 1162, and 1203 of, to add Sections 1156.5, 1158.1, and 1159.1 to, and to add and repeal Section 1201.6 of, the Harbors and Navigation Code, relating to pilots, and making an appropriation therefor.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1136 of the Harbors and Navigation Code is amended to read:

1136. Every pilot and inland pilot licensed pursuant to this division shall do all of the following:

(a) Take an oath of office in the manner prescribed by law.

(b) Submit monthly to the board a verified account of all moneys or other compensation received by the pilot or inland pilot as a result of pilotage services, or by any other person for the pilot or inland pilot, or on the pilot's or inland pilot's account, on the forms furnished by the board.

SEC. 2. Section 1150 of the Harbors and Navigation Code is amended to read:

1150. (a) There is in the state government a Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun, consisting of seven members appointed by the Governor, with the consent of the Senate, as follows:

(1) Two members shall be pilots licensed pursuant to this division.

(2) Two members shall represent the industry and shall be persons currently engaged as owners, officers, directors, employees, or representatives of a firm or association of firms, which is a substantial user of pilotage service in San Francisco, San Pablo, and Suisun Bays, one of whom shall be engaged in the field of tanker company operations, and one of whom shall be engaged in dry cargo operations. The board of directors of a regional maritime trade association controlled by West Coast vessel operators which specifically represents the owners and operators of vessels or barges engaged in transportation by water of cargo or passengers from or to the Pacific area of the United States shall nominate, rank, and submit to the Governor the names of three persons for each category of industry member to be appointed.

(3) Three members shall be public members. Any person may serve as a public member unless otherwise prohibited by law, except that during their term of office or within the two years preceding their appointment, public members appointed on or after January 1, 1991, shall not have (A) any financial or proprietary interest in the ownership, operation, or management of tugs, cargo, or passenger vessels, (B) sailed under the authority of a federal or state pilot

license in waters under the jurisdiction of the board, (C) been employed by a company which is a substantial user of pilot services, or (D) been a consultant or other person providing professional services who had received more than 20 percent in the aggregate of his or her income from a company which is a substantial user of pilot services or an association of companies which are substantial users of pilot services. Ownership of less than one-tenth of 1 percent of the stock of a publicly traded corporation is not a financial or proprietary interest in the ownership of tugs, cargo, or passenger vessels.

(4) Notwithstanding any other provision of law, nothing in this chapter prohibits the Governor from notifying the nominating authority identified in paragraph (2) that persons nominated are unacceptable for appointment. Following that notification, the nominating authority shall submit a new list of nominees to the Governor, naming three persons, none of which were previously nominated, from which the Governor may make the appointment. This process shall be continued until a person nominated by the nominating authority and satisfactory to the Governor has been appointed.

(b) Each of the members appointed pursuant to subdivision (a) shall be appointed for a four-year term, and shall not be appointed for more than two terms. Vacancies on the board for both expired and unexpired terms shall be filled by the appointing power in the manner prescribed by subdivision (a).

(c) The board members serving on January 1, 1985, shall continue to serve as the public members on the board and shall select one board member to serve a two-year term, one board member to serve a three-year term, and one board member to serve a four-year term. The board member selected for the initial two-year term may serve two additional four-year terms, if appointed pursuant to this section, and the remaining board members may only serve one additional four-year term, if appointed pursuant to this section.

(d) A quorum of the board members consists of four members. All actions of the board shall require the vote of four members, a quorum being present.

SEC. 3. Section 1151 of the Harbors and Navigation Code is amended to read:

1151. Each member of the board shall be a citizen of the United States and a resident of one of the following counties: San Francisco, Alameda, Contra Costa, Marin, Sacramento, San Mateo, Santa Clara, Solano, San Joaquin, Napa, Sonoma, or Yolo. The member shall hold office during the pleasure of the power appointing the member, not to exceed four years from the date of the member's commission.

SEC. 4. Section 1156 of the Harbors and Navigation Code is amended to read:

1156. The board may appoint, fix the compensation of, and from time to time adjust the compensation of, an executive director, an administrative assistant/secretary, and such other employees as may be necessary.

SEC. 5. Section 1156.5 is added to the Harbors and Navigation Code, to read:

1156.5. The executive director shall serve at the pleasure of the board and shall be under the direct supervision of the board. The term of office to which the executive director is appointed is five years. The first person appointed to the position of executive director shall be initially appointed by a vote of at least four members of the board. Following the initial appointment, the executive director and subsequent executive directors, may be appointed, reappointed, or removed from office only by a vote of at least four members of the board, including at least one industry member, one pilot member, and one public member. The board may delegate to the executive director any of the following functions:

(a) The administration of personnel employed by the board, in accordance with the civil service laws.

(b) To serve as treasurer of the board and keep, maintain, and provide the board with all statements of accounts, records of receipts, and disbursements of the board in accordance with law.

(c) The issuance and countersigning of licenses, which shall also be signed by the president of the board.

(d) The administration of matters and the maintenance of files pertaining to actions taken against licenses issued by the board.

(e) The investigation of and reporting on a navigational incident or other matter for which a license issued by the board may be revoked or suspended.

(f) To work with the pilot evaluation committee to recommend to the board improvements in the pilot training program.

(g) Under the direction of the board, to coordinate with other state and federal agencies charged with protecting the environment and with the oil and hazardous chemical shipping industry.

(h) Any other function, task, or duty as may reasonably be assigned by the president of the board, including, but not limited to, performing research and obtaining documents and other evidence for board activities, including rate hearings.

SEC. 6. Section 1157 of the Harbors and Navigation Code is amended to read:

1157. The administrative assistant/secretary shall work under the direct supervision of the executive director and shall keep a written record of all the board's proceedings and acts, and shall keep a register of all pilots appointed, their residence and the date of each license. In addition, he or she shall perform such additional clerical, administrative, and other duties as may reasonably be required by the executive director.

SEC. 7. Section 1158 of the Harbors and Navigation Code is amended to read:

1158. The public members, the executive director, and the administrative assistant/secretary of the board shall not have any interest in any pilot vessel or tug, or in the earnings thereof, except for the compensation provided in this chapter.

SEC. 8. Section 1158.1 is added to the Harbors and Navigation Code, to read:

1158.1. The executive director shall not, during the term of his or her office, serve as a member of the board, nor as a pilot or inland pilot, nor be otherwise concurrently employed in the maritime industry.

SEC. 9. Section 1159.1 is added to the Harbors and Navigation Code, to read:

1159.1. The vessel shall pay a board operations surcharge, the purpose of which is to fully compensate the board for its official services, for the services of its staff, and for all its incidental expenses. The amount of the surcharge shall be 7.5 percent of all pilotage fees charged by pilots and inland pilots, pursuant to Sections 1190 and 1191 unless the board establishes, with the approval of the Department of Finance, a lesser percentage. The surcharge shall be billed and collected by the pilots and inland pilots. The pilots and inland pilots shall pay all surcharges collected by them to the board monthly or at such later time as the board may direct. The board shall quarterly review its ongoing and anticipated expenses and adjust the surcharge to reflect any changes which have occurred since the last adjustment.

SEC. 10. Section 1162 of the Harbors and Navigation Code is amended to read:

1162. (a) The pension plan shall be administered and all benefit payments shall be made by a fiduciary agent selected by the board. Except for the collection of revenues in accordance with Section 1165 and the pilots serving as members of the board, the pilots shall have no control of any kind or manner over the operation, administration, or management of the plan.

(b) All revenues pursuant to the plan shall be collected by the pilots, at no cost to the state, board, or committee, and transmitted monthly to the fiduciary agent. The revenues shall not be included in the account required by Section 1136.

SEC. 11. Section 1201.6 is added to the Harbors and Navigation Code, to read:

1201.6. (a) Commencing on January 1, 1991, to, and including, December 31, 1995, this section shall determine how all pilotage rate recommendations shall be made to the Legislature by the board.

(1) Any party directly affected by pilotage rates established under this chapter may petition the board for a public hearing on any of the matters set forth in Section 1200. The board shall, within 10 days, request the appointment of an administrative law judge by the Director of the Office of Administrative Hearings for the purpose of holding hearings to receive evidence relating to the issues raised in the petition. The board shall give notice of the hearings to all interested parties who have requested notification.

(2) The administrative law judge shall conduct a hearing into the issues raised in the petition and take evidence submitted by all interested parties and shall determine the admissibility, credibility,

and weight to be given to all evidence submitted. Interested parties may cross-examine witnesses who provide testimony at the hearing. The administrative law judge shall, at the conclusion of the hearing, render written findings of fact and conclusions as to whether a change in the pilotage rates are justified by the evidence and make written proposals to the board of what new pilotage rates, if any, should be adopted.

(3) Within 30 days of receipt of the administrative law judge's written findings, conclusions, and proposals for new rates, if any, the board shall hold a public hearing at which it shall determine whether to accept or reject the administrative law judge's proposals. At the conclusion of the hearing, the board shall submit to the Secretary of the Senate and the Chief Clerk of the Assembly a copy of the administrative law judge's findings, conclusions, and proposals for new rates, if any, and whether the board accepted or rejected the proposals, supported by a transcript of the proceedings before the board and before the administrative law judge. In determining whether to accept or reject the administrative law judge's findings, conclusions, and proposals for rate changes, if any, the board need not have at least one representative of industry and one representative of the pilots present, if at least four members are present.

(4) The administrative law judge shall not receive written evidence at a public hearing held for the purpose of considering pilotage rates unless 10 or more copies of the evidence have been deposited with the board as public documents by the party proposing a rate adjustment 30 or more days prior to the date set for the commencement of the hearing.

(5) The administrative law judge shall not receive written evidence at the hearing from any party responding to the request unless 10 copies of the evidence are deposited with the board 10 or more days prior to the date set for the commencement of the hearing.

(6) Paragraphs (4) and (5) do not prohibit the introduction of evidence specifically requested by the administrative law judge or the board.

(7) Public hearings for the purpose of obtaining information and data relating to the issues raised in any petition regarding pilotage rates shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and a full record shall be kept of all evidence offered. The administrative law judge's proposals regarding new rates, if any, shall give consideration to all relevant factors including, but not limited to, those items set forth in subdivisions (a) to (g), inclusive, of Section 1203.

(b) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 12. Section 1203 of the Harbors and Navigation Code is amended to read:

1203. In preparing recommendations to the Legislature with relationship to pilotage rates, the board may require an independent audit or audits by a public accountant selected by the board. The audits required by the board shall cover pilotage operations for those years which the board may specify. In preparing the recommendations, the board shall also give consideration to other relevant factors, including, but not limited to, the following:

(a) The costs to the pilots, individually or jointly, of providing pilot service as required.

(b) A net return to the pilot sufficient to attract and hold persons capable of performing this service with safety to the public and protection to the property of persons using the service; and the relationship of that income to any changes in cost-of-living indices.

(c) Pilotage rates charged for comparable services rendered in other ports and harbors in the United States.

(d) The methods of determining pilotage rates in other ports and harbors in the United States.

(e) Economic factors affecting the local shipping industry, including prospective increases or decreases in income and labor costs.

(f) Additional factors affecting income to pilots such as the volume of shipping traffic using pilotage, numbers of pilots available to perform services, income paid for comparable services, and other factors of related nature.

(g) Changes in, or additions to, navigational and safety equipment necessary to insure protection of persons, ships, and waterways.

CHAPTER 1424

An act to amend Section 6103.10 of the Government Code, and to amend Sections 25205.2, 25342, and 25347.6 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 6103.10 of the Government Code is amended to read:

6103.10. Section 6103 does not apply to any fee or charges required to be paid to the State Director of Health Services or to the State Board of Equalization pursuant to Chapter 6.5 (commencing with Section 25100) of, and Chapter 6.8 (commencing with Section 25300) of, Division 20 of the Health and Safety Code.

SEC. 2. Section 25205.2 of the Health and Safety Code is amended

to read:

25205.2. (a) Except as provided in subdivision (c), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each state fiscal year, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. The department shall notify the board of all known facility operators by facility type and size at the time it establishes the facility fees pursuant to Section 25205.3. The department shall also notify the board of any operator issued a permit or grant of interim status within 30 days after a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities operating pursuant to a permit by regulation.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status, or a person who is in a closure period approved by the department pursuant to Article 9 (commencing with Section 25200) and Article 12 (commencing with Section 25245), is not subject to the fee, for any fiscal year following the fiscal year in which the variance or closure was granted or approved by the department or in the fiscal year following any fiscal year in which the facility has completed all activities necessary for the department to approve the closure, including, but not limited to, submittal of a certification that these activities are completed to the department.

SEC. 3. Section 25342 of the Health and Safety Code is amended to read:

25342. Every person who submitted for disposal or who disposed of in the state or outside of the state, or who submitted for treatment at a location outside of the state, more than 500 pounds of hazardous waste during the preceding calendar year shall report to the board the following information on forms prescribed by the board:

(a) The total amount of hazardous waste, as defined by Section 25117, the federal regulation of which has been suspended under the Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.) by act of Congress, which that person has disposed of, or submitted for disposal, in the state or outside of the state, plus the total amount of hazardous waste, which that person has transferred to a surface impoundment for purposes of reducing the water content of the waste and material by evaporation, plus the total amount of hazardous waste disposed of into an injection well or landfarm, as defined in subdivision (g) of Section 25345, exclusive of that waste specified in subdivisions (d) and (e).

(b) The total amount of hazardous waste disposed of, or submitted for disposal, in the state or outside of the state, by that person,

exclusive of that waste specified in subdivisions (a), (c), (d), and (e).

(c) The total amount of extremely hazardous waste disposed of, or submitted for disposal, in the state or outside of the state, by that person, exclusive of that waste specified in subdivisions (a), (b), (d), and (e).

(d) The total amount of hazardous or extremely hazardous waste that person has disposed of, or submitted for disposal, in the state or outside of the state, from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from mining of uranium ore.

(e) The total amount of hazardous waste that person has disposed of, or submitted for disposal, in the state that is a solid hazardous waste residue resulting from incineration or dechlorination.

(f) Persons submitting hazardous waste for treatment at a location outside of the state shall report, according to the categories set forth in subdivisions (a) to (d), inclusive, the total amount of hazardous waste residue resulting from that treatment which requires disposal.

SEC. 4. Section 25347.6 of the Health and Safety Code is amended to read:

25347.6. (a) On and after July 1, 1989, the State Board of Equalization shall assess a fee upon a potentially responsible party for the costs incurred by the department in connection with the oversight of any removal or remedial action taken by that party pursuant to Section 25355.5 or any action taken by that party pursuant to an order issued pursuant to subdivision (a) of Section 25358.3. The fee is in addition to the costs incurred for the removal or remediation which are not oversight costs, and shall be recovered pursuant to Section 25360. The fees shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the state account.

(b) A potentially responsible party shall pay the fee imposed pursuant to this section prior to the commencement of the action for which the oversight occurs. The amounts of the fee specified in this section are base rates for the 1989–90 fiscal year. Thereafter, the State Board of Equalization shall adjust the fee annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index issued by the Department of Labor or a successor agency of the United States government.

(c) A potentially responsible party shall pay a fee of five thousand dollars ($5,000) to pay for the costs of those actions deemed necessary by the department to accurately estimate the size and complexity of a hazardous substance release site to establish the fee imposed pursuant to subdivisions (d) to (j), inclusive.

(d) A potentially responsible party shall pay a fee for a preliminary endangerment assessment of seven thousand five hundred dollars ($7,500).

(e) A potentially responsible party shall pay a fee for oversight of a removal action of fourteen thousand five hundred dollars ($14,500) for a small removal action, thirty-seven thousand dollars ($37,000) for

a medium removal action, seventy-three thousand five hundred dollars ($73,500) for a large removal action, and one hundred forty-seven thousand dollars ($147,000) for an extra-large removal action.

(f) A potentially responsible party shall pay a fee for oversight of a remedial investigation and a feasibility study of twenty-one thousand five hundred dollars ($21,500) for a small site, forty-three thousand dollars ($43,000) for a medium site, eighty-five thousand five hundred dollars ($85,500) for a large site, and two hundred thousand dollars ($200,000) for an extra-large site.

(g) A potentially responsible party shall pay a fee for oversight of a remedial action plan of four thousand five hundred dollars ($4,500) for a small site, nine thousand dollars ($9,000) for a medium site, eighteen thousand dollars ($18,000) for a large site, and thirty-eight thousand dollars ($38,000) for an extra-large site.

(h) A potentially responsible party shall pay a fee for oversight of a remedial design of seven thousand five hundred dollars ($7,500) for a small site, fourteen thousand five hundred dollars ($14,500) for a medium site, twenty-nine thousand dollars ($29,000) for a large site, and eighty thousand dollars ($80,000) for an extra-large site.

(i) A potentially responsible party shall pay a fee for the oversight of a final remedial action of ten thousand dollars ($10,000) for a small site, twenty thousand dollars ($20,000) for a medium site, forty thousand dollars ($40,000) for a large site, and one hundred six thousand dollars ($106,000) for an extra-large site.

(j) A potentially responsible party shall pay a fee per year for oversight and monitoring of ongoing operation and maintenance activities of six thousand dollars ($6,000) for a small operation and maintenance activity, twelve thousand dollars ($12,000) for a medium operation and maintenance activity, twenty-four thousand dollars ($24,000) for a large operation and maintenance activity, and thirty-four thousand dollars ($34,000) for an extra-large operation and maintenance activity.

(k) (1) Fees for any oversight activity being performed on July 1, 1989, or any subsequent date, shall be assessed pursuant to this section and Section 25347.7, even if the activity began prior to July 1, 1989. If the activity began prior to July 1, 1989, the fees shall be payable within 60 days after the effective date of the act adding this section. This section shall not apply to activities for which work has been completed prior to July 1, 1989.

(2) If there is a conflict between this subdivision and Section 25347.7 and the provisions of any agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 25355.5 prior to the effective date of the act adding this section, the agreement shall prevail, unless the agreement is modified as allowed by its terms or by mutual consent of all parties.

(3) Any order or agreement entered into for removal or remedial action may be modified by consent of all parties to assess the fees listed in this section in place of any provisions for charges or cost

recovery contained in the order of agreement.

(*l*) Notwithstanding this section, a potentially responsible party shall pay the State Board of Equalization a fee equal to the actual costs of the department's costs of oversight, in advance of the oversight for removal or remedial activities which is done, pursuant to an agreement, if the site is not listed pursuant to Section 25356, except the potentially responsible party is not required to pay for the costs of any activities necessary and incidental to entering the agreement, which shall be reimbursed pursuant to the agreement.

(m) (1) The department may reclassify a site as to size, as warranted by new information supplied by the department, but this reclassification shall not result in a change in the amount of fees for oversight of any activity which has been completed or is underway.

(2) If a site may be classified as two sizes pursuant to Sections 25313.5, 25317.5, 25318, and 25326.6, it shall be classified as the larger of those sizes.

(n) Notwithstanding this section, the department may waive the fees imposed by this section for any hazardous substance release site owned and operated by an agency of the federal government, if the department has entered into an agreement with that agency for the payment of fees in an amount different from the amounts specified in this section.

(o) A fee assessed pursuant to this section is a necessary cost of a removal or remedial action, and any person who pays this fee may seek contribution or indemnity from any person who is a responsible party for the removal or remedial action or other action for which the fee is assessed. The Hazardous Substance Cleanup Arbitration Panel may apportion liability for fees to be assessed, or which have been assessed and paid, pursuant to this section, pursuant to Section 25356.2.

CHAPTER 1425

An act to amend Sections 1501.5 and 3460 of the Fish and Game Code, relating to wildlife, and making an appropriation therefor.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 1501.5 of the Fish and Game Code is amended to read:

1501.5. (a) The department may enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement with public and private entities whenever the department finds that the contracts will assist in meeting the department's duty to preserve, protect, and restore fish and wildlife.

(b) The department may grant funds for fish and wildlife habitat preservation, restoration, and enhancement to public agencies, Indian tribes, and nonprofit entities whenever the department finds that the grants will assist it in meeting its duty to preserve, protect, and restore fish and wildlife.

(c) Contracts authorized under this section are contracts for services and are governed by Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. No work under this section is public work or a public improvement, and is not subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(d) This section does not apply to contracts for any of the following:

(1) Construction of office, storage, garage, or maintenance buildings.

(2) Drilling wells and installation of pumping equipment.

(3) Construction of permanent hatchery facilities, including raceways, water systems, and bird exclosures.

(4) Construction of permanent surfaced roadways and bridges.

(5) Any project requiring engineered design or certification by a registered engineer.

(6) Any contract, except contracts with public agencies, nonprofit organizations, or Indian tribes that exceed fifty thousand dollars ($50,000) in cost, excluding the cost for gravel, for fish and wildlife habitat preservation, restoration, and enhancement for any one of the following:

(A) Fish screens, weirs, and ladders.

(B) Drainage or other watershed improvements.

(C) Gravel and rock removal or placement.

(D) Irrigation and water distribution systems.

(E) Earthwork and grading.

(F) Fencing.

(G) Planting trees or other habitat vegetation.

(H) Construction of temporary storage buildings.

SEC. 2. Section 3460 of the Fish and Game Code is amended to read:

3460. (a) Subject to appropriation pursuant to Section 3467, the director may enter into contracts with nonpublic entities which are owners of record, or with lessees, who have the owners of record execute the contract, of land determined by the director to be important for the conservation of waterfowl. The contract shall enforceably restrict the use of the land for the conservation of waterfowl and their habitat consistent with Section 8 of Article XIII of the California Constitution.

(b) The director shall give priority to contracts that have the greatest potential for restoring, enhancing, and protecting high quality waterfowl habitat, especially that which is subject to destruction, drastic modification, or significant curtailment of habitat values.

(c) Contracts entered into pursuant to this section are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

CHAPTER 1426

An act to add Section 13108.9 to the Health and Safety Code, relating to fire protection.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 13108.9 is added to the Health and Safety Code, to read:

13108.9. The State Fire Marshal shall adopt regulations to require a public address system with an emergency backup power system for all buildings or structures constructed on or after July 1, 1991, which are intended for public assemblies of 10,000 or more persons.

The State Fire Marshal shall adopt regulations to require any existing building or structure intended for public assemblies of 10,000 or more persons which, on or after January 1, 1991, has or subsequently installs a public address system, to have an emergency backup power system for the public address system.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1427

An act to amend Sections 5091, 5362, and 5363 of the Education Code, to amend Sections 1007, 17113, 22843.5, 23511, 23530.5, and 24002 of the Elections Code, and to amend Section 71180 of the Government Code, relating to elections.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 5091 of the Education Code is amended to read:

5091. (a) Whenever a vacancy occurs, or whenever a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools.

In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall call an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next regular election date provided pursuant to Chapter 1 (commencing with Section 2500) of Division 4 of the Elections Code not less than 130 days after the occurrence of the vacancy or after the written resignation is filed with the county superintendent of schools.

(c) If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A petition shall be deemed to bear a sufficient number of signatures if signed by at least the number of registered voters of the district equal to 1½ percent of the number of registered voters of the district at the time of the last regular election for governing board members, or 25 registered voters, whichever is greater.

The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, the provisional appointment is terminated, and the county superintendent of schools shall call a special election to be conducted no later than the 120th day after the determination. However, if a regular election date, as defined in Section 2500 of the Elections Code, occurs between the 120th day and

the 150th day following the determination, the county superintendent of schools may call the special election to be conducted on the regular election date.

(d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following his or her appointment.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

(f) Whenever a petition calling for a special election is circulated, the petition shall meet all of the following requirements:

(1) The petition shall contain the clerk's estimate of the cost of conducting the special election.

(2) The name and residence address of at least one, but not more than five, of the proponents of the petition shall appear on the petition, each of which proponents shall be a registered voter of the school district or community college district, as applicable.

(3) None of the text or other language of the petition shall appear in less than six-point type.

(4) The petition shall be prepared and circulated in conformity with the requirements of Sections 41 and 44 of the Elections Code.

If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.

No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

SEC. 2. Section 5362 of the Education Code is amended to read:

5362. As an alternative to publication by newspaper pursuant to Section 5363, publication of formal notice may be effected pursuant to this section. Not later than 90 days prior to the date of any school district or community college district election, the county superintendent of schools having jurisdiction shall cause to be posted the formal notice of the election in public view at all of the following:

(a) Every schoolhouse in the territory, district or districts in which the election is to be held.

(b) At three public places in the territory, district or districts.

SEC. 2.5. Section 5363 of the Education Code is amended to read:

5363. (a) Except where the procedure prescribed by Section 5362 is utilized, the elections official responsible for the conduct of a governing board member election shall cause formal notice of the election to be published pursuant to Section 23511 of the Elections Code.

(b) Except where the procedure prescribed by Section 5362 is utilized, the election official responsible for the conduct of a ballot measure election shall cause the formal notice of the election to be published pursuant to Section 2554 of the Elections Code.

SEC. 3. Section 1007 of the Elections Code is amended to read:

1007. (a) Upon receipt of any absentee ballot application signed by the voter, which arrives within the proper time, the elections official should determine if the signature and residence address on the ballot application appear to be the same as that on the original affidavit of registration. The official may make this signature check upon receiving the voted ballot, but the signature must be compared before the absent voter ballot is canvassed.

(b) If the official deems the applicant entitled to an absent voter's ballot he or she shall deliver by mail or in person the appropriate ballot. The ballot may be delivered to the applicant, his or her spouse, or his or her parent if the applicant is unmarried. The clerk shall deliver the absentee ballot to the applicant's spouse or parent only if the spouse or parent signs a statement attested to under penalty of perjury that provides the name of the applicant, his or her relationship to the applicant, and affirms that he or she is authorized by the applicant to deliver the absentee ballot.

(c) If the official determines that an application does not contain all of the information prescribed in Section 1002 or 1006, or for any other reason is defective, and the election official is able to ascertain the voter's address, the official shall, within one working day of receiving the application, mail the voter an absent voter's ballot together with a notice. The notice shall inform the voter that the voter's absent voter's ballot shall not be counted unless the applicant provides the official with the missing information or corrects the defects prior to, or at the time of, receipt of the voter's executed absent voter's ballot. The notice shall specifically inform the voter of the information that is required or the reason for the defects in the application, and shall state the procedure necessary to remedy the defective application.

If the voter substantially complies with the requirements contained in the official's notice, the voter's ballot shall be counted.

In determining from the records of registration if the signature and residence address on the application appear to be the same as that on the original affidavit of registration, the clerk or registrar of voters may use the duplicate file of affidavits of registered voters or the facsimiles of voter's signatures, provided that the method of preparing and displaying the facsimiles complies with law.

SEC. 4. Section 17113 of the Elections Code is amended to read:

17113. Whenever a candidate whose name appears upon the

ballot at any election dies after the 68th day before the election, the votes cast for the deceased candidate shall be counted in determining the results of the election for the office for which the decedent was a candidate. If the deceased candidate receives a majority of the votes cast for the office, he or she shall be considered elected and the office to which he or she was elected shall be vacant at the beginning of the term for which he or she was elected. The vacancy thus created shall be filled in the same manner as if the candidate had died subsequent to taking office for that term.

SEC. 4.5. Section 22843.5 of the Elections Code is amended to read:

22843.5. (a) If, by 5 p.m. on the 63rd day prior to the day fixed for a regularly scheduled municipal election, (i) no one or only one person has been nominated for any office which is elected on a citywide basis, or (ii) no one or only one person is nominated to be elected from or by a legislative district, or (iii) in the case of any office or offices to be elected at large, the number of persons who have been nominated for those offices does not exceed the number to be filled at that election, the city clerk shall submit a certificate of these facts to the governing body of the city and inform the governing body of the city that it may, at a regular or special meeting held before the municipal election, adopt one of the following courses of action:

(1) Appoint to the office the person who has been nominated.

(2) Appoint to the office any eligible elector if no one has been nominated.

(3) Hold the election if either no one or only one person has been nominated. The city clerk shall publish a notice of the facts described in this section and the courses of action available under this subdivision. Publication shall be made pursuant to Section 6061 of the Government Code in any newspaper of general circulation as designated by the clerk.

After the tenth day following the date of publication, the governing body of the city may make the appointment or direct an election to be held in the affected territory. The person appointed, if any, shall qualify and take office and serve exactly as if elected at a municipal election for the office.

If, by the 50th day before the municipal election, no person has been appointed to office pursuant to paragraph (1) or (2), the election shall be held.

(b) Subdivision (a) shall not apply if, at the regularly scheduled municipal election, more than one person has been nominated to another city office to be elected on a citywide basis or, a city measure has qualified and is to be submitted to the voters at that municipal election.

(c) Notwithstanding Chapter 8 (commencing with Section 7300) of Division 6 or any other provision of the law to the contrary, if the governing body of a city makes an appointment pursuant to subdivision (a), the clerk shall not accept for filing any statement of

write-in candidacy which is submitted after the appointment is made.

In the event that an appointment to office is made in a particular legislative district pursuant to subdivision (a), that appointment shall not affect the conduct of the municipal election in other legislative districts of the city.

SEC. 5. Section 23511 of the Elections Code is amended to read:

23511. (a) At least 90 days, and not more than 120 days, before the day fixed for the general district election the elections official of the principal county shall publish a notice of the election once in a newspaper of general circulation published in the district or, if no such newspaper is published in the district, in a newspaper having general circulation in the district published in any affected county in the district. The notice shall contain the date of the general district election, name the offices for which candidates may file, and state the qualifications required by the principal act for each office. The notice shall state the location where official declarations of candidacy for eligible candidates desiring to file for any of the elective offices may be obtained, the office in which completed declarations of candidacy are required to be filed, and the date and time after which no declarations of candidacy may be accepted for filing. The notice shall state that appointment to each elective office will be made as prescribed by Section 23520 in the event there are no nominees or an insufficient number of nominees for the office and a petition for an election is not filed with the elections official within the time period prescribed by Section 23520.

(b) In addition to the requirements of subdivision (a), the county clerk shall, by a general press release, set forth all of the following:

(1) The elective offices of the district to be filled at the ensuing district election.

(2) A telephone number which voters of the district may utilize in order to obtain information regarding filing for the elective district office.

SEC. 6. Section 23530.5 of the Elections Code is amended to read:

23530.5. Whenever a candidate has filed a declaration of candidacy, and the candidate's declaration of candidacy has been certified as sufficient pursuant to Section 23512.12, the name of the candidate shall be printed upon the ballot unless the candidate has died and that fact has been ascertained by the officer charged with the duty of printing the ballots, at least 68 days before the day of the election.

SEC. 7. Section 24002 of the Elections Code is amended to read:

24002. The forms for declaration of candidacy for governing board elections shall be in substantially the following form:

"I, _____, do hereby declare myself as a candidate for election to the governing board of _____ District, of the County of _____; I am a registered voter; if elected I will qualify and serve to the best of my ability; and I request my name be placed on the

official ballots of the district, for the election to be held on the _____ day of _____ 19__.

Residence address: _____"

In an election held under Section 5018 of the Education Code to elect additional governing board members all candidates for member of the governing board shall also indicate on their declaration of candidacy whether they are candidates for the existing office or for the new offices.

SEC. 8. Section 71180 of the Government Code is amended to read:

71180. (a) Any vacancy in the office of judge of a municipal court shall be filled by appointment by the Governor, but no vacancy shall be deemed to exist in any such office before the time fixed in Sections 71080, 71082, and 71083 for the selection of the judges of that court and the time fixed by law for their qualification. The appointee shall hold office for the remainder of the unexpired term of his or her predecessor and until his or her successor is elected and qualifies.

If the office to which any person so appointed was not previously occupied, he or she shall hold office until his or her successor is elected at the general state election next succeeding the occurrence of the vacancy and qualifies. No successor to the appointee shall be elected at any election held within 10 months of the date of the occurrence of the vacancy.

(b) If a vacancy in the office of judge of a municipal court occurs between the last day candidacy declaration papers may be filed and the June direct primary election and that vacancy occurs because of the appointment of the incumbent judge to another office by the Governor, or because the incumbent has resigned, retired, died, or been removed from office in accordance with subdivision (b) or (c) of Section 18 of Article VI of the California Constitution, and if one or more qualified persons other than the incumbent have filed candidacy declaration papers for the office, no vacancy shall be deemed to exist for purposes of subdivision (a) and the election for the office of judge shall be postponed until the next November statewide election.

If the Governor appoints the incumbent judge to another office within 68 days of the June direct primary election, and, as a result, the elections officer does not have sufficient time to remove the candidates' names from the ballot, the June direct primary election for the office shall not be deemed to have been held. At the next November statewide election, the candidate who receives the most votes shall be elected.

In order for a person's name to appear on the ballot at the next November statewide election the person shall file candidacy declaration papers and nomination papers in accordance with Article 4 (commencing with Section 6489) of Chapter 5 of Division 6 of the Elections Code. No previously filed papers shall satisfy the requirements of this subdivision. Qualified persons who did not file

nomination papers for the June direct primary election, as well as qualified persons who filed nomination papers for the June direct primary election, shall be permitted to file candidacy papers for the November statewide election.

Persons who had previously paid the filing fee at the time of filing nomination papers for the June direct primary election shall not be required to pay a filing fee for the November statewide election.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1428

An act to amend Sections 63.6, 71.4, 76.3, 76.7, 776, 777, and 786 of, and to repeal Section 76.9 of, the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 63.6 of the Harbors and Navigation Code is amended to read:

63.6. (a) (1) On or before the 15th day of January of each odd-numbered year, the director shall make a report to the commission, the Legislature, and the Governor covering the operations of the department for the preceding biennium.

(2) With respect to Article 5 (commencing with Section 76), the report shall include all of the following:

(A) The total amount of loans made in each of the three fiscal years immediately preceding the preparation and submission of the report.

(B) For each recipient of a loan during each of the three fiscal years immediately preceding the preparation and submission of the report, the recipient's name, the location of the marina for which the loan was made, and the amount of the loan.

(C) The financial status of each loan.

(D) Any legislative recommendations.

(3) The report shall also include the status of the department's activities related to the monitoring of rates pursuant to Section 71.4, and subdivision (d) of Section 76.7.

(b) The department shall also make such special reports as are

requested by the Secretary of the Resources Agency or the Governor.

SEC. 2. Section 71.4 of the Harbors and Navigation Code is amended to read:

71.4. (a) The department, subject to the approval of the Legislature in accordance with Section 85.2, may make loans to cities, counties, or districts having power to acquire, construct, and operate small craft harbors, for the planning, acquisition, construction, improvement, maintenance, or operation of small craft harbors and facilities in connection therewith, and connecting waterways, if the department finds that the project is feasible.

(b) The department shall establish, by rules and regulations, policies and standards to be followed in making loans pursuant to this section so as to further the proper development and maintenance of a statewide system of small craft harbors and connecting waterways. Any rules and regulations may include policies and standards for restrooms, vessel pumpout facilities, oil recycling facilities, and receptacles for the purpose of separating, reusing, or recycling all solid waste materials.

(c) Any such loan shall be repaid as provided in Section 70.

(d) Rates to be charged for the use of the boating facilities shall be established by the city, county, or district, subject to the approval of the department, in every loan contract. The department shall concern itself with the rates charged only as prescribed in Section 71.8. The rates set shall be based on a monthly berthing charge.

The department shall monitor these rates to ensure that the berthing charges are reasonable and not exorbitant.

(e) The department shall submit any project for which it recommends any loan be made to the Governor for inclusion in the Budget Bill.

SEC. 3. Section 76.3 of the Harbors and Navigation Code is amended to read:

76.3. (a) The department may make loans to private marina owners for construction costs, not including planning, design, and other similar expenses, to develop a recreational marina. Loan funds from the department may be utilized for berthing facilities, dredging, parking, public access facilities, restrooms, vessel pumpout facilities, oil recycling facilities, utilities, landscaping, receptacles for the purpose of separating, reusing, or recycling all solid waste materials, and other incidental boating-related amenities.

(b) No loan made by the department to a private marina owner shall exceed 25 percent of the funds annually budgeted for purposes of this article.

(c) The department shall not make a loan to a recreational marina that restricts access or bars the public other than what is consistent with general commercial business practices.

(d) Any private marina owner who purchases facilities previously developed with a department loan is eligible to apply for a new construction loan from the department.

SEC. 3.5. Section 76 3 of the Harbors and Navigation Code is amended to read:

76.3. (a) The department may make loans to private marina owners for construction costs, not including planning, design, and other similar expenses, to develop a recreational marina. Loan funds from the department may be utilized for berthing facilities, dredging, parking, public access facilities, restrooms, vessel pumpout facilities, oil recycling facilities, utilities, landscaping, receptacles for the purpose of separating, reusing, or recycling all solid waste materials, and other incidental boating-related amenities.

(b) No loan made by the department to a private marina owner shall exceed 50 percent of the funds annually budgeted for purposes of this article.

(c) The department shall not make a loan to a recreational marina that restricts access or bars the public other than what is consistent with general commercial business practices.

(d) Any private marina owner who purchases facilities previously developed with a department loan is eligible to apply for a new construction loan from the department.

SEC. 4. Section 76.7 of the Harbors and Navigation Code is amended to read:

76.7. (a) All loans made by the department to private marina owners shall be funded from the Harbors and Watercraft Revolving Fund.

(b) All loans, including those loans previously made under Section 35300 of the Financial Code, shall be repaid by private marina owners to the Harbors and Watercraft Revolving Fund.

(c) Private marina owners receiving loans made by the department shall not charge unreasonably high boat berthing fees.

(d) The department shall monitor the berthing fees of the private marina owners receiving department loans to ensure that these rates are reasonable and not exorbitant.

SEC. 5. Section 76.9 of the Harbors and Navigation Code is repealed.

SEC. 6. Section 776 of the Harbors and Navigation Code is amended to read:

776. (a) Every vessel terminal shall, as required by the regional board for the protection of the quality of the waters of this state, be equipped with vessel pumpout facilities for the transfer and disposal of sewage from marine sanitation devices. In imposing this requirement, the regional board shall take into account the number and type of vessels that use or are berthed at the vessel terminal and whether there exists at other locations pumpout facilities that have a total capacity sufficient for, and are convenient and accessible to, vessels that use or are berthed at the vessel terminal. In addition, the regional board may require any vessel pumpout facility to be equipped with a meter for the purpose of measuring use of the facility. All pumpout facilities installed after the operative date of the statute adding this section shall be equipped with a meter.

(b) This section does not apply to the following:

(1) Small craft launching facilities.

(2) Dockage adjacent to and serving private residences in areas where vessel pumpout facilities are conveniently available to vessels so docked, as determined by the regional board.

(3) Other types of facilities designated by the regional board after consulting with the department.

(c) Any violation of this section is a misdemeanor. In addition, any violation of this section is subject to any remedy provided for in Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code.

SEC. 7. Section 777 of the Harbors and Navigation Code is amended to read:

777. (a) Vessel pumpout facilities for the transfer and disposal of sewage from marine sanitation devices, floating restrooms, and onshore toilets shall be operated and maintained in a manner that will prevent the discharge of any sewage to the waters of the state and shall be maintained in good working order and regularly cleaned.

(b) Every vessel pumpout facility shall have a notice posted on the facility identifying the local enforcement agency where a violation of subdivision (a) may be reported.

(c) Any violation of this section is a misdemeanor. In addition, any violation of this section is subject to any remedy provided for in Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code.

SEC. 8. Section 786 of the Harbors and Navigation Code is amended to read:

786. (a) Any loan made pursuant to Section 71.4 or 76.3, and any lease or concession contract entered into pursuant to Section 72, shall be subject to the express condition that the borrower comply with all applicable requirements of this chapter.

(b) Any loan made pursuant to Section 71.4 or 76.3 for, respectively, a project or a recreational marina that is required, pursuant to Section 776, to provide vessel pumpout facilities shall be subject to the following express conditions:

(1) The pumpout facility shall be opened to public use within six months of receiving any funds, or when any part of the project is opened to public use, whichever is later, unless the department determines that the facility cannot be opened to public use within this period due to circumstances beyond the control of the borrower.

(2) The borrower shall agree to budget funds each year for the maintenance and operation of the pumpout facility for its expected life.

(3) The location of the pumpout facility shall be publicized, by any convenient means available, and shall be marked with a distinctive and prominent sign that is readily identifiable from offshore locations.

(4) Charges imposed for the use of the pumpout facility shall not,

in the aggregate, exceed the cost of maintaining and operating the pumpout facility and a pro rata share of the amount necessary for repayment of the loan.

(5) The portion of the loan equal to the cost of the pumpout facility shall become immediately due, if the borrower does not perform any requirement imposed pursuant to this subdivision.

(c) Any lessee or concessionaire that is required, pursuant to Section 776, to provide vessel pumpout facilities, shall be required through the lease or concession contract to comply with requirements that are not less restrictive than the requirements imposed by paragraphs (1) to (4), inclusive, of subdivision (b).

(d) Any loan made pursuant to Section 71.4 or 76.3, and any concession contract entered into pursuant to Section 72, shall be subject to the express condition that restrooms be opened to public use within six months of the date the project is opened to public use, unless the department determines that the facility cannot be opened to public use within this period due to circumstances beyond the control of the borrower.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 76.3 of the Harbors and Navigation Code proposed by both this bill and AB 3005. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 76.3 of the Harbors and Navigation Code, and (3) this bill is enacted after AB 3005, in which case Section 3 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1429

An act to add Section 14021.4 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that:

(a) Persons with serious and persistent mental illness suffer from

psychiatric disabilities which require long-term treatment, support, and rehabilitation.

(b) Two hundred and sixty thousand to five hundred and eighty thousand California citizens suffer from serious and persistent mental illness.

(c) The California public mental health system must address, to the maximum extent possible, the mental health treatment needs of this disabled population with appropriate services which include long-term treatment, support, and rehabilitation.

SEC. 2. Section 14021.4 is added to the Welfare and Institutions Code, to read:

14021.4. (a) The State Department of Mental Health shall prepare by January 15, 1991, amendments to California's plan for federal Medi-Cal grants for medical assistance programs, pursuant to Subchapter XIX (commencing with Section 1396) of Title 42 of the United States Code, to accomplish the following objectives:

(1) Expansion of the location and type of therapeutic services offered to the mentally ill under Medi-Cal by the category of "other diagnostic, screening, preventative, and rehabilitative services" which is available to states under the Social Security Act (42 U.S.C. Sec. 1396d(a)(13); 42 C.F.R. 440.130).

(2) Expansion of federal financial participation in the costs of community mental health services provided by local Short-Doyle community mental health programs or under contract to local Short-Doyle community mental health programs.

(3) Expansion of the location where reimbursable Short-Doyle Medi-Cal mental health services can be provided, including home, school, and community based sites.

(4) Expansion of federal financial participation for services which meet the rehabilitation needs of severely mentally ill consumers, including, but not limited to, medication management, functional rehabilitation assessments of clients, and rehabilitative services which include remedial services directed at restoration to the highest possible functional level for persons with psychiatric disabilities and maximum reduction of symptoms of mental illness.

(5) Improvement of fiscal systems and accountability structures for Short-Doyle Medi-Cal and Short-Doyle costs and rates, with the goal of achieving federal fiscal requirements.

(b) This Short-Doyle Medi-Cal state plan revision shall be completed with review and comments by the California Conference of Local Mental Health Directors and other appropriate groups. The addition of the rehabilitative option shall be limited to Short-Doyle providers certified to provide Medi-Cal under this option.

(c) The State Department of Health Services shall review the state plan revision for medicaid services as recommended by the State Department of Mental Health. If the state plan amendment satisfies published federal requirements for these amendments and if the State Department of Health Services has approved and submitted to the Health Care Financing Administration a plan of

correction for audit issues identified for the Short-Doyle Medi-Cal program, then the department shall promptly pursue federal adoption of the state plan revision. If the State Department of Health Services does not recommend adoption of the revision, it shall report on the financial and programmatic implications of the proposal and the reasons for the rejection to the Joint Legislative Budget Committee by July 1, 1991.

(d) The state and local funds required to match federal financial participation shall include, but not be limited to, Short-Doyle and county matching funds. Additional General Fund moneys for this purpose shall be subject to appropriation in the annual Budget Act.

(e) It is the intent of the Legislature that the rehabilitation option of the state medicaid plan be implemented to expand and provide flexibility to treatment services and to increase the federal participation without increasing the costs to the General Fund.

(f) It is the intent of the Legislature that addition of the rehabilitation option as a Short-Doyle Medi-Cal benefit shall become operative only after the Health Care Financing Administration has reviewed and approved the state plan revision submitted by the State Department of Health Services, a plan of correction approved by the department for audit issues identified for the Short-Doyle Medi-Cal program has been submitted, and the requirements of this section have been fully satisfied.

(g) If the Medi-Cal state plan revision required by this section is approved by the State Department of Health Services, and submitted for federal approval, the State Department of Mental Health shall review and revise the quality assurance standards and guidelines required by Article 5 (commencing with Section 4070) of Chapter 2 of Division 4 to meet the necessary standards to assure that quality services are delivered to the eligible population. This review shall include, but not be limited to, appropriate use of mental health professionals, including psychiatrists, in the treatment and rehabilitation of clients under this model. The existing quality assurance standards and guidelines shall remain in effect until the adoption of the new quality assurance standards and guidelines.

CHAPTER 1430

An act to amend Sections 55 and 3571 of the Elections Code, and to amend Section 88002 of the Government Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 55 of the Elections Code is amended to read:

55. The Secretary of State is the chief elections officer of the state, and has the powers and duties specified in Section 12172.5 of the Government Code.

SEC. 2. Section 3571 of the Elections Code is amended to read:

3571. The ballot pamphlet shall contain as to each state measure to be voted upon, the following in the order set forth in this section:

(a) Upon the top portion of the first page and not exceeding one-third of the page shall appear:

(1) The identification of the measure by number and title.

(2) The official summary prepared by the Attorney General.

(3) The total number of votes cast for and against the measure in both the State Senate and Assembly if the measure was passed by the Legislature.

(b) Beginning at the top of the right page shall appear the analysis prepared by the Legislative Analyst, provided that the analysis fits on a single page. If it does not fit on a single page, then the analysis shall begin on the lower portion of the first left page and shall continue on subsequent pages until it is completed.

(c) Arguments for and against the measure shall be placed on the next left and right pages, respectively, following the page on which the analysis of the Legislative Analyst ends. The rebuttals shall be placed immediately below the arguments.

(d) If no argument against the measure has been submitted, the argument for the measure shall appear on the right page facing the analysis.

(e) The complete text of each measure shall appear at the back of the pamphlet. The text of the measure shall contain the provisions of the proposed measure and the existing provisions of law repealed or revised by the measure. The provisions of the proposed measure differing from the existing provisions of law affected shall be distinguished in print, so as to facilitate comparison.

(f) The following statement shall be printed at the bottom of each page where arguments appear: "Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency."

SEC. 3. Section 88002 of the Government Code is amended to read:

88002. The ballot pamphlet shall contain as to each state measure to be voted upon, the following in the order set forth in this section:

(a) Upon the top portion of the first page and not exceeding one-third of the page shall appear:

(1) The identification of the measure by number and title.

(2) The official summary prepared by the Attorney General.

(3) The total number of votes cast for and against the measure in both the State Senate and Assembly if the measure was passed by the Legislature.

(b) Beginning at the top of the right page shall appear the analysis prepared by the Legislative Analyst, provided that the analysis fits on a single page. If it does not fit on a single page, then the analysis shall begin on the lower portion of the first left page and shall continue on subsequent pages until it is completed.

(c) Arguments for and against the measure shall be placed on the next left and right pages, respectively, following the page on which the analysis of the Legislative Analyst ends. The rebuttals shall be placed immediately below the arguments.

(d) If no argument against the measure has been submitted, the argument for the measure shall appear on the right page facing the analysis.

(e) The complete text of each measure shall appear at the back of the pamphlet. The text of the measure shall contain the provisions of the proposed measure and the existing provisions of law repealed or revised by the measure. The provisions of the proposed measure differing from the existing provisions of law affected shall be distinguished in print, so as to facilitate comparison.

(f) The following statement shall be printed at the bottom of each page where arguments appear: "Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency."

SEC. 4. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the changes proposed by this act concerning the procedure for the printing of the statewide ballot pamphlet be in effect in time for the November 6, 1990, general election, it is necessary that this act take effect immediately.

CHAPTER 1431

An act to amend Sections 17314.3, 17323, 17332, 17333, 17336, 17348, and 17423 of the Financial Code, relating to escrow agents.

[Approved by Governor September 27, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 17314.3 of the Financial Code is amended to read:

17314.3. (a) A deductible shall apply to each loss suffered by a member in the amount of five thousand dollars ($5,000), plus 5 percent of the amount by which the loss exceeds five thousand dollars ($5,000). If a member with more than one licensed location suffers a covered loss at more than one location, the deductible shall apply to each location separately in proportion to the amount of the loss suffered at each such licensed location.

(b) Fidelity Corporation shall pay the full amount of any member's loss to the member or the member's successor in interest. The member shall be obligated to pay to Fidelity Corporation the amount of the member's deductible after payment in full of the loss by Fidelity Corporation.

(c) In the event a license is surrendered, suspended, or revoked prior to payment in full by the member of all or any portion of the deductible, the member shall nevertheless be liable to Fidelity Corporation for the amount of the deductible. If the license of the member is surrendered, suspended, or revoked prior to payment in full of the deductible, Fidelity Corporation shall have priority over all other claimants, except the State of California and any conservator or receiver of the member's estate, against the assets of the licensee, including the bond required under Section 17202.

(d) Nothing in this section shall be construed to give any person or entity not (1) a member of Fidelity Corporation, or (2) a successor in interest of a member, or (3) the commissioner any right of action or any right to make a claim directly against Fidelity Corporation, its officers, directors, agents, or employees. Fidelity Corporation shall be entitled to recover its reasonable costs and attorney's fees as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure, in defending any claim made directly against Fidelity Corporation, not authorized in this division.

(e) If a member fails to pay the deductible within the time set forth in the bylaws of Fidelity Corporation, Fidelity Corporation may bring an action at law or in equity against the member to recover the amount of the deductible. Fidelity Corporation shall recover its reasonable costs and attorney's fees as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of

subdivision (c) of Section 1033.5 of the Code of Civil Procedure, provided, that the payment of the costs and attorney's fees will not cause the member to be in violation of Section 17202, 17202.1, or 17210.

SEC. 2. Section 17323 of the Financial Code is amended to read:

17323. (a) In the event any member fails to pay an assessment when due, Fidelity Corporation shall by written demand addressed to the member request the payment of the assessment within 30 days of the demand letter. If the member fails to pay an assessment, the commissioner may issue an order pursuant to subdivision (b).

(b) If a member fails to pay the assessment, or any applicable late fee, the commissioner may by order summarily suspend the license issued to the company. If after the order is made, a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its license is suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the suspension of a license shall not affect the powers of the commissioner as provided in this division.

(c) Fidelity Corporation may bring an action at law or in equity against the member to recover any assessment or fees.

(d) Fidelity Corporation may be awarded costs and reasonable attorney's fees, if it prevails in any action against a member, or against a third party, except the commissioner, to enforce a claim against the bond or other security posted by the member pursuant to Section 17202, or in any action against a member pursuant to subdivision (c). Those costs and attorney's fees may be awarded as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure, provided that the payment of the costs and attorney's fees will not cause the member to be in violation of Section 17202, 17202.1, or 17210.

SEC. 3. Section 17332 of the Financial Code is amended to read:

17332. When either Fidelity Corporation or the insurer providing the fidelity bond or insurance policy, if any, under Section 17310, or both, pay an obligation on behalf of a member, Fidelity Corporation and the insurer shall be subrogated to the rights, claims, and remedies of the member up to the amount paid by Fidelity Corporation and the insurer on behalf of the member. In any subrogation action filed by Fidelity Corporation, the provider of the fidelity bond or insurance policy if payment was made thereunder, or both, Fidelity Corporation shall have the first right to the proceeds of any judgment or settlement obtained against the subrogees, up to the amount actually paid on the claim by Fidelity Corporation, plus reasonable costs and attorney's fees which may be awarded either as part of any judgment or as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure, provided that

the payment of the costs and attorney's fees will not cause the member to be in violation of Section 17202, 17202.1, or 17210. Amounts recouped by Fidelity Corporation through subrogation, minus all costs, attorney's fees, and other administrative expenses incurred in obtaining that recovery, shall be credited to the fidelity fund.

SEC. 4. Section 17333 of the Financial Code is amended to read:

17333. The commissioner may forthwith upon written notice and order take possession of the property and business of Fidelity Corporation and retain possession until Fidelity Corporation satisfies the commissioner that it will operate in conformity with this chapter whenever it appears to the commissioner that Fidelity Corporation has done any of the following:

(a) Violated its articles of incorporation or any law of this state.

(b) Invested its funds in violation of Section 17337.

(c) Not levied assessments as required by Sections 17320, 17321 and 17321.1.

(d) Has not diligently prosecuted an action pursuant to Section 17323.

(e) Violated any section of this chapter.

(f) Neglected or refused to submit its books, papers, and affairs to the inspection of the commissioner.

During the time the commissioner has possession the commissioner shall perform the duties and carry out the obligations of Fidelity Corporation.

SEC. 5. Section 17336 of the Financial Code is amended to read:

17336. (a) Fidelity Corporation shall have independent authority to investigate claims filed by members pursuant to Section 17330.

(b) Fidelity Corporation, upon submitting written notice to the commissioner, may conduct an examination or investigation of the business practices of a member's handling and processing of trust obligations or the failure to pay an assessment under Section 17320, 17321, or 17321.1. The result of every investigation or examination shall be reported to the commissioner together with the recommendations of the Board of Directors of Fidelity Corporation.

(c) Fidelity Corporation may submit reports and make recommendations to a member on its findings as a result of an examination or investigation conducted pursuant to this section. These reports and recommendations shall not be public documents. A copy of all reports and recommendations shall be furnished to the commissioner by Fidelity Corporation. There shall be no liability on the part of, and no cause of action of any nature shall arise against, Fidelity Corporation or its members, directors, officers, employees, stockholders, or agents or the commissioner or commissioner's authorized representatives for any statements made by them in any reports or recommendations made hereunder.

(d) Fidelity Corporation, upon the request of the commissioner, may participate in an examination or investigation of the books and

records of a member. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the commissioner, or members of the commissioner's staff or the commissioner's authorized representative for the release of any information furnished to Fidelity Corporation pursuant to this subdivision.

(e) With the written consent of a majority of its directors, Fidelity Corporation, in order to fulfill its obligations under this section, may appoint an independent certified public accountant or public accountant or hire or appoint a specialized committee or employees to conduct an examination or investigation authorized by this section. Any reports as a result thereof shall be furnished to the commissioner pursuant to the provisions of subdivision (c).

(f) For the purposes of conducting an examination or investigation, Fidelity Corporation or its appointee shall have free access to the offices and places of business, books, accounts, bank account records and statements, papers, records, files, safes and vaults of the member.

(g) Fidelity Corporation may cause an examination or audit of the places of business, books, accounts, bank account records, papers, records, files, safes and vaults of a member to be conducted in accordance with Fidelity Corporation's bylaws and rules.

(h) Costs and expenses for the examination or investigation conducted pursuant to subdivision (b) shall be paid to the Fidelity Corporation by the licensee, its shareholders, directors, and officers, or person examined, each of whom shall be jointly and severally liable therefor. The Fidelity Corporation may maintain an action for recovery of these costs in any court of competent jurisdiction, and shall recover its reasonable costs and attorney's fees as an item of costs as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure, provided that the payment of the costs and attorney's fees will not cause the member to be in violation of Section 17202, 17202.1, or 17210.

(i) Fidelity Corporation, any member of Fidelity Corporation, an agent of Fidelity Corporation or of its members, or any person who uses any information obtained under this section for any purpose not authorized herein is guilty of a misdemeanor.

(j) Fidelity Corporation may cause an examination or audit of a member, to be conducted in accordance with Fidelity Corporation's Bylaws and Rules, whenever:

(1) The member has failed to pay an assessment as provided for under Section 17320, 17321, or 17321.1.

(2) Fidelity Corporation has received any information of irregular or improper handling of the trust obligations of the member or of an occurrence which may give rise to a claim for loss of trust obligations.

(3) Fidelity Corporation so elects, either with or without notice.

(k) Costs and expenses for any examination under this section shall be paid for by the member. Fidelity Corporation shall also be

entitled to recover costs and expenses for any examination under this section from those persons, if any, who are discovered to be responsible for, or to have caused, any irregular or improper handling of trust obligations of the member or any occurrence which may give rise to a claim for loss of trust obligations, or otherwise by failure to cooperate, unnecessarily increase the cost of the examination. Fidelity Corporation may maintain an action for recovery of these examination costs and expenses in any court of competent jurisdiction, and shall recover its reasonable costs and attorney's fees as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure, provided that the payment of the costs and attorney's fees will not cause the member to be in violation of Section 17202, 17202.1, or 17210.

SEC. 6. Section 17348 of the Financial Code is amended to read:

17348. In order to permit Fidelity Corporation to fulfill its obligation under this chapter, the commissioner shall furnish a list of all persons licensed under this division as of December 31 of each year and a copy of an escrow liability schedule filed with the commissioner. Each member on or before February 15 shall furnish to the commissioner and Fidelity Corporation the schedule of its escrow liability for each of its licensed locations as of the last day of each month for the preceding 12 months which ended December 31. The schedule shall be in the form and contain such information as the commissioner may require.

SEC. 7. Section 17423 of the Financial Code is amended to read:

17423. (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

(2) That the person has been convicted of, or pleaded nolo contendere to, a crime, or has been held liable in a civil action by final judgment, if the crime or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property.

(b) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from disbursing any trust funds in the escrow agent's possession, custody or control, and the financial institution holding trust funds shall be so notified by service of the notice, accusation and other administrative pleadings. The prohibition against disbursement of trust funds may be set aside, in

whole or in part, by the commissioner for good cause.

(c) Fidelity Corporation shall disclose to all licensees the identity of persons who have been censured, suspended, or barred from any position of employment, management, or control.

CHAPTER 1432

An act to amend Sections 44060 and 44380 of, to repeal Section 44383 of, and to add Section 44003.1 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 44003.1 is added to the Health and Safety Code, to read:

44003.1. (a) Notwithstanding Section 44003.5 or subdivision (a) of Section 44003, the state board shall request the Bureau of Automotive Repair to implement the motor vehicle inspection program in every district that has been designated nonattainment for the state ambient ozone or carbon monoxide standard unless one or more of the following is true:

(1) The program has already been implemented in the district.

(2) The district's nonattainment problem is predominantly caused by transport as determined by the state board pursuant to subdivision (a) of Section 39610.

(3) The state board determines that implementation of the motor vehicle inspection program will neither resolve nor mitigate nonattainment.

(b) The area of the district to be included in the program shall be specified by the state board.

(c) This section does not apply to the Lake Tahoe Air Basin as defined by the state board pursuant to subdivision (a) of Section 39606.

SEC. 2. Section 44060 of the Health and Safety Code is amended to read:

44060. (a) The department shall prescribe the form of the certificate of compliance or noncompliance. The department shall charge a fee to licensed smog check stations for the issuance by the department to the stations of certificate of compliance or noncompliance forms. The fee charged shall be calculated to allow funding of the department and any other state agency directly involved in the implementation of the motor vehicle inspection program, and shall not exceed the amount reasonably necessary to fund the operation of the program, including all responsibilities, requirements, and obligations imposed upon the department or any

of those state agencies by this chapter, which are not otherwise recoverable by license fees pursuant to Section 44034. Except for adjustments to reflect changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics, the fee for each certificate of compliance or noncompliance shall not exceed seven dollars ($7). It is the intent of the Legislature that a prudent surplus be maintained in the Vehicle Inspection and Repair Fund. If the surplus exceeds reasonable costs of administration of the programs specified in this chapter and in Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, the department shall, by regulation, prescribe a lower fee for the certificate of compliance or noncompliance.

(b) The sale or transfer of any certificate of compliance or noncompliance by a licensed smog check station to any other licensed smog check station or any other person, and the purchase or acquisition of any certificate of compliance or noncompliance by any person, other than from the department, the department's designee, or pursuant to a vehicle inspection or repair conducted pursuant to this chapter, is prohibited.

(c) The fee charged by licensed stations to consumers for a certificate of compliance or a certificate of noncompliance shall be the same amount charged by the department.

SEC. 3. Section 44380 of the Health and Safety Code is amended to read:

44380. (a) On or before August 1, 1991, the state board shall adopt a regulation (1) requiring each district to adopt a fee schedule which recovers the costs of the district and assesses a fee upon the operator of every facility subject to this part and (2) setting forth the amount of revenue which the district must collect to recover the reasonable anticipated cost which will be incurred by the state board and the department to implement and administer this part. A district may request the state board to adopt a fee schedule for the district if the district's program costs are approved by the district board and transmitted to the state board by April 1 of the year in which the request is made. Commencing August 1, 1992, and annually thereafter, the state board shall review and may amend the fee regulation.

(b) The district shall notify each person who is subject to the fee of the obligation to pay the fee. If a person fails to pay the fee within 60 days after receipt of this notice, the district, unless otherwise provided by district rules, shall require the person to pay an additional administrative civil penalty. The district shall fix the penalty at not more than 100 percent of the assessed fee, but in an amount sufficient in its determination, to pay the district's additional expenses incurred by the person's noncompliance. If a person fails to pay the fee within 120 days after receipt of this notice, the district may initiate permit revocation proceedings. If any permit is revoked, it shall be reinstated only upon full payment of the overdue fee plus any late penalty, and a reinstatement fee to cover administrative

costs of reinstating the permit.

(c) Each district shall collect the fees assessed pursuant to subdivision (a). After deducting the costs to the district to implement and administer this part, the district shall transmit the remainder to the Controller for deposit in the Air Toxics Inventory and Assessment Account, which is hereby created in the General Fund. The money in the account is available, upon appropriation by the Legislature, to the state board and the department for the purposes of administering this part.

SEC. 4. Section 44383 of the Health and Safety Code is repealed.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1433

An act to amend Sections 9887.1, 9887.2, 9888.1, 9888.2, 9888.3, 9888.4, 9889.15, and 9889.19 of, to amend the headings of Article 6 (commencing with Section 9888.1) and Article 8 (commencing with Section 9889.15) of Chapter 20.3 of Division 3 of, and to repeal Sections 9889.17 and 9889.18 of, the Business and Professions Code, to amend Sections 43000.5, 44002, 44011.6, 44012, 44020, 44021, 44051, 44051.5, 44053, and 44060 of, and to add Sections 44003.1 and 44015.5 to, the Health and Safety Code, and to add Section 27159 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 9887.1 of the Business and Professions Code is amended to read:

9887.1. The director shall have the authority to issue licenses for official lamp and brake adjusting stations and shall license lamp and brake adjusters. The licenses shall be issued in accordance with this chapter and regulations adopted by the director pursuant thereto. The director shall establish by regulation the terms of adjusters' licenses as are necessary for the practical administration of the provisions relating to adjusters, but those terms shall not be for less than one nor more than four years. Licenses may be renewed upon application and payment of the renewal fees if the application for renewal is made within the 30-day period prior to the date of

expiration. Persons whose licenses have expired shall immediately cease the activity requiring a license, but the director shall accept applications for renewal during the 30-day period following the date of expiration if they are accompanied by a new license fee. In no case shall a license be renewed where the application is received more than 30 days after the date of expiration.

SEC. 2. Section 9887.2 of the Business and Professions Code is amended to read:

9887.2. Each application for a new or renewal license shall be accompanied by a fee of ten dollars ($10) for a new license or five dollars ($5) for a renewal license. The application shall be made upon a form furnished by the director. It shall contain such information concerning the applicant's background and experience as the director may prescribe, in addition to other information required by law. No license as a lamp or brake adjuster shall be issued or renewed unless the applicant has demonstrated his or her experience and qualifications in accordance with such standards and examinations as the director may prescribe.

SEC. 3. The heading of Article 6 (commencing with Section 9888.1) of Chapter 20.3 of the Business and Professions Code is amended to read:

Article 6. Lamp and Brake Adjusting Stations

SEC. 4. Section 9888.1 of the Business and Professions Code is amended to read:

9888.1. As used in this chapter:

(a) "Station" means a lamp adjusting station or a brake adjusting station.

(b) "Licensed station" means a station licensed by the bureau pursuant to this chapter.

(c) "Licensed adjuster" means a person licensed by the bureau for adjusting lamps in licensed lamp adjusting stations or for adjusting brakes in licensed brake adjusting stations.

SEC. 5. Section 9888.2 of the Business and Professions Code is amended to read:

9888.2. The director shall adopt regulations which prescribe the equipment and other qualifications of any station as a condition to licensing the station as an official station for adjusting lamps or brakes and shall prescribe the qualifications of adjusters employed therein.

After consulting with the Department of the California Highway Patrol, the director may, by regulation, approve testing and calibrating equipment, which is capable of measuring or calibrating the standards imposed by statute and by rules and regulations, for use in official stations, and may approve the testing laboratories and the equipment they use to certify the performance of testing and calibrating equipment.

SEC. 6. Section 9888.3 of the Business and Professions Code is amended to read:

9888.3. No person shall operate an "official" lamp or brake adjusting station unless a license therefor has been issued by the director. No person shall issue, or cause or permit to be issued, any certificate purporting to be an official lamp adjustment certificate unless he or she is a licensed lamp adjuster or an official brake adjustment certificate unless he or she is a licensed brake adjuster.

SEC. 7. Section 9888.4 of the Business and Professions Code is amended to read:

9888.4. An owner of a fleet of three or more vehicles who is not an interstate carrier may be licensed by the director as a licensed station, if the owner complies with the rules and regulations of the bureau. Those fleet owner stations shall not certify the adjustment of lamps or brakes except on vehicles which constitute the owner's fleet.

SEC. 8. The heading of Article 8 (commencing with Section 9889.15) of Chapter 20.3 of the Business and Professions Code is amended to read:

Article 8. Lamp and Brake Adjustment Certificates

SEC. 9. Section 9889.15 of the Business and Professions Code is amended to read:

9889.15. As used in this article , "station," "licensed station," and "licensed adjuster" have the same meaning as defined in Article 6 (commencing with Section 9888.1).

SEC. 10. Section 9889.17 of the Business and Professions Code is repealed.

SEC. 11. Section 9889.18 of the Business and Professions Code is repealed.

SEC. 12. Section 9889.19 of the Business and Professions Code is amended to read:

9889.19. The director may charge a fee for lamp and brake adjustment certificates furnished to licensed stations. The fee charged shall be established by regulation and shall not produce a total estimated revenue which, together with license fees or certification fees charged pursuant to Sections 9886.3, 9887.2, and 9887.3, is in excess of the estimated total cost to the bureau of the administration of this chapter. The fee charged by licensed stations for lamp and brake adjustment certificates shall be the same amount the director charges.

SEC. 13. Section 43000.5 of the Health and Safety Code is amended to read:

43000.5. The Legislature further finds and declares:

(a) That despite the significant reductions in vehicle emissions which have been achieved in recent years, continued growth in population and vehicle miles traveled throughout California have the potential not only to prevent attainment of the state standards, but in some cases, to result in worsening of air quality.

(b) That the attainment and maintenance of the state air quality

standards will necessitate the achievement of substantial reductions in new vehicle emissions and substantial improvements in the durability of vehicle emissions systems.

(c) That the burden for achieving needed reductions in vehicle emissions should be distributed equitably among various classes of vehicles, including both on- and off-road vehicles, light-duty cars and trucks, and heavy-duty vehicles, to accomplish improvements in both the emissions level and in-use performance and durability of all new motor vehicles.

(d) That the state board should take immediate action to implement both short- and long-range programs of across-the-board reductions in vehicle emissions and smoke, including smoke from heavy-duty diesel vehicles, which can be relied upon by the districts in the preparation of their attainment plans or plan revisions pursuant to Sections 40911, 40902, and 40925.

(e) That in order to attain the state and federal standards as expeditiously and equitably as possible, it is necessary for the authority of the state board to be clarified and expanded with respect to the control of motor vehicles and motor vehicle fuels.

SEC. 14. Section 44002 of the Health and Safety Code is amended to read:

44002. The department shall have the sole and exclusive authority within the state for developing and implementing the motor vehicle inspection program in accordance with this chapter.

For the purposes of administration and enforcement of this chapter, the department, and the director and officers and employees thereof, shall have all the powers and authority granted under Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code and under Chapter 33 (commencing with Section 3300) of Title 16 of the California Code of Regulations. Inspections and repairs performed pursuant to this chapter, in addition to meeting the specific requirements imposed by this chapter, shall also comply with all requirements imposed pursuant to Division 1 (commencing with Section 1) and Division 1.5 (commencing with Section 475) and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code and Chapter 33 (commencing with Section 3300) of Title 16 of the California Code of Regulations.

SEC. 15. Section 44003.1 is added to the Health and Safety Code, to read:

44003.1. Notwithstanding Section 44003.5 or subdivision (a) of Section 44003, immediately after January 1, 1991, the state board shall request the Bureau of Automotive Repair to implement the motor vehicle inspection program in every district that has been designated nonattainment for the state ambient ozone or carbon monoxide standard unless one or more of the following is true:

(a) The program is being implemented in the district.

(b) The district's nonattainment problem is predominantly

caused by transport as determined by the state board pursuant to subdivision (a) of Section 39610 and the state board determines that the implementation of the motor vehicle inspection program will neither resolve nor mitigate that problem.

The area of the district to be included in the program shall be specified by the state board, after consultation with the district.

This section does not apply to the Lake Tahoe Air Basin as defined by the state board pursuant to subdivision (a) of Section 39606.

SEC. 16. Section 44011.6 of the Health and Safety Code is amended to read:

44011.6. (a) As expeditiously as possible, the state board shall develop a test procedure for the detection of excessive smoke emissions from heavy-duty diesel motor vehicles that is feasible for use in an intermittent roadside inspection program. During the development of the test procedure, the state board shall cooperate with the Department of the California Highway Patrol in conducting roadside inspections. The state board may also specify visual or functional inspection procedures to determine the presence of tampering or defective emissions control systems in heavy-duty diesel or heavy-duty gasoline motor vehicles. The chairperson of the state board shall appoint an ad hoc advisory committee which shall include, but not be limited to, representatives of heavy-duty engine manufacturers, carriers of property for compensation using heavy-duty gasoline or diesel motor vehicles, and the Department of the California Highway Patrol. The advisory committee shall cooperate with the state board to develop a test procedure pursuant to this subdivision and shall advise the state board in developing regulations to implement test procedures and inspection of heavy-duty commercial motor vehicles.

(b) The state board shall, by regulation, prohibit the use of heavy-duty motor vehicles which are determined to have excessive smoke emissions or other emissions-related defects, using the test procedure established pursuant to subdivision (a). However, visual or functional inspection procedures for heavy-duty gasoline vehicles shall not be more stringent than those prescribed by the department for heavy-duty gasoline vehicles subject to biennial inspection pursuant to Section 44013. The state board may issue a citation to the owner or operator for any vehicle in violation of regulations adopted under this subdivision. These regulations may require the operator of a vehicle to submit to a test procedure adopted pursuant to subdivision (a), may specify that refusal to so submit is a violation of the regulations, and shall require that, when a citation has been issued, the owner of a vehicle in violation of the regulations shall immediately correct every deficiency specified in the citation.

(c) The department may develop criteria for one or more classes of smog check stations capable of determining compliance with regulations adopted pursuant to subdivision (b) and may authorize those stations to issue certificates of compliance to vehicles in compliance with the regulations. The department may contract for

the operation of smog check stations for heavy-duty vehicles pursuant to this subdivision, and only heavy-duty vehicles may be inspected at these stations.

(d) In addition to the corrective action required by subdivision (b), the owner of a motor vehicle in violation of the regulations adopted pursuant to subdivision (b) is subject to a civil penalty of not more than one thousand five hundred dollars ($1,500) per day for each day that the vehicle is in violation. The state board may adopt a schedule of reduced civil penalties to be applied in cases where violations are corrected in an expeditious manner. The schedule of reduced civil penalties shall not, however, apply where there have been repeated incidents of emissions control system tampering. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Vehicle Inspection and Repair Fund. Funds in the Vehicle Inspection and Repair Fund shall, when appropriated by the Legislature, be available to the state board and the Department of the California Highway Patrol for the conduct of intermittent roadside inspections of heavy-duty vehicles pursuant to this section.

(e) Following the adoption of regulations pursuant to subdivision (b), the state board and the Department of the California Highway Patrol shall commence inspecting heavy-duty motor vehicles. With the concurrence of the Department of the California Highway Patrol, these inspections may be conducted in conjunction with the safety and weight enforcement activities of the Department of the California Highway Patrol or at other locations selected by the state board or the Department of the California Highway Patrol. Inspection locations may include private facilities where fleet vehicles are serviced or maintained. The state board and the Department of the California Highway Patrol may conduct these inspections either cooperatively or independently, and the state board may contract for assistance in the conduct of these inspections.

(f) The state board shall inform the Department of the California Highway Patrol whenever a vehicle owner cited pursuant to subdivision (b) fails to take a required corrective action or to pay a civil penalty levied pursuant to subdivisions (d) and (h) in a timely manner. Following notice and opportunity for an administrative hearing pursuant to subdivision (i), the state board may request the Department of the California Highway Patrol to remove the vehicle from service and order the vehicle stored. Upon notification from the state board of payment of any civil penalties imposed under subdivision (d) and storage and related charges, the vehicle shall be released to the owner or designee. Upon release of the vehicle, the owner or designee shall correct every deficiency specified in any citation to that owner with respect to the vehicle.

(g) The state board, in consultation with the Department of the California Highway Patrol, shall, within two years of the adoption of regulations pursuant to subdivision (b), prepare and submit to the Legislature a report on the smoke emissions enforcement program

conducted under this section, including, but not limited to, its assessment of the effectiveness of the program, the impact of the program on the operations of the Department of the California Highway Patrol, and its recommendations for changes in, alternatives to, or termination of, the program.

(h) In addition to the corrective action required by subdivision (b), and in addition to the civil penalty imposed by subdivision (d), the owner of a motor vehicle cited by the state board pursuant to subdivision (b) shall pay a penalty of three hundred dollars ($300) per citation; except that this penalty shall not apply to the first citation for any schoolbus. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Diesel Emission Reduction Fund, which fund is hereby created. Funds in the Diesel Emission Reduction Fund shall, when appropriated by the Legislature, be available to the State Energy Resources Conservation and Development Commission for research, development, and demonstration programs undertaken pursuant to Section 24617 of the Public Resources Code.

(i) The state board shall adopt regulations that afford an owner cited under subdivision (b) an opportunity for an administrative hearing. Any owner cited under subdivision (b) may request an administrative hearing within 30 days following either personal receipt or certified mail receipt of the citation. If the owner fails to request an administrative hearing within 30 days, the citation shall be deemed a final order and not subject to review by any court or agency. If the owner requests an administrative hearing and fails to seek review by administrative mandamus pursuant to Section 1094.5 of the Code of Civil Procedure within 60 days after the mailing of the administrative hearing decision, the decision shall be deemed a final order and not subject to review by any other court or agency. The 30-day period may be extended by the administrative hearing officer for good cause.

(j) Following exhaustion of the review procedures provided for in subdivision (i), the state board may apply to the Superior Court of Sacramento County for a judgment in the amount of the civil penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

SEC. 17. Section 44012 of the Health and Safety Code is amended to read:

44012. The test at the smog check stations shall be performed in accordance with procedures prescribed by the department pursuant to Section 44013 and shall include all of the following:

(a) A determination that emission control devices and systems required by state and federal law are installed and functioning correctly in accordance with the test procedure adopted pursuant to subdivision (b) of Section 44013.

(b) A preconditioning of the motor vehicle to ensure representative and stabilized operation of the vehicle's emission

control system.

(c) For other than diesel-powered vehicles, a test of the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, and carbon dioxide in an idle mode or loaded mode in accordance with the procedure prescribed by the department. Testing for oxides of nitrogen emissions shall be included if the district has requested testing for oxides of nitrogen and the department has implemented a testing program pursuant to Section 44003.

(d) For diesel-powered vehicles when the department determines that the inclusion of those vehicles is technologically and economically feasible, a test of the vehicle's exhaust emissions in an idle mode or loaded mode in accordance with the procedure prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(e) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

SEC. 18. Section 44015.5 is added to the Health and Safety Code, to read:

44015.5. (a) A certificate of compliance shall not be issued to any new motor vehicle or motor vehicle with a new motor vehicle engine which is not certified by the state board, and which is the subject of a transaction prohibited by Section 43152 or 43153.

(b) With respect to a new motor vehicle or motor vehicle with a new motor vehicle engine not certified by the state board which is in violation of Article 1.5 (commencing with Section 43150) of Chapter 2, but which is not the subject of a transaction prohibited by Section 43152 or 43153, a certificate of noncompliance shall be issued. The certificate of noncompliance shall indicate the basis for nonconformity and the data shall be sent to the state board.

SEC. 19. Section 44020 of the Health and Safety Code is amended to read:

44020. Notwithstanding any other provision of this chapter, the department may license any owner of a fleet of 15 or more motor vehicles subject to this chapter, who so elects, to implement and conduct the tests and to perform necessary service and adjustment on the fleet's vehicles under this chapter, subject to all of the following conditions:

(a) The owner's facilities or personnel, or both, or a designated contractor of the owner, shall be licensed by the department as a fleet smog check station, and the test and repair system shall conform, in the department's determination, with all provisions of this chapter and all rules and regulations adopted by the department. The regulations shall provide for adequate onsite inspection by the department.

(b) A license issued under this section is subject to Sections 44035 and 44050 and may be suspended or revoked by the department

whenever the department determines, on the basis of random spot checks of the owner's inspection system and fleet vehicles, that the system fails to conform or that certificates of compliance have been issued by the owner in violation of regulations adopted by the department. Any person licensed to conduct tests and service and adjustments under this section is deemed to have consented to provide the department with whatever access, information, and other cooperation the department reasonably determines are necessary to facilitate the random spot checks.

(c) A fleet owner licensed to conduct tests or make repairs pursuant to this chapter shall issue certificates of compliance for motor vehicles which comply with the requirements of this chapter. The cost limitations in Section 44017 shall not apply to any motor vehicle owned by a fleet owner licensed pursuant to this section.

(d) The department shall establish initial and renewal license fees, which shall not exceed the reasonable costs of administering this section.

SEC. 20. Section 44021 of the Health and Safety Code is amended to read:

44021. (a) The department shall conduct ongoing cost benefit analyses and other evaluations of the motor vehicle inspection program, including, but not limited to, observed patterns of malfunctions in inspected motor vehicles' emissions control systems, inquiries from the public regarding emissions system warranties, inspection and repair costs, the failure rate after repairs, and recommendations for legislation to improve the inspection program.

The department shall prepare and submit an annual report to the Legislature on the analyses and evaluations of the program. The department shall conduct at least one public hearing prior to submitting each report and shall include pertinent information which it receives from the public hearing in that report.

Commencing in 1989, and every year thereafter, the department shall include the following information in its annual report:

(1) A narrative description of what actions have been taken by the department, since the last report, to implement recommendations contained in the reports of the review committee submitted pursuant to subdivision (b). The description shall indentify the funds expended to implement the recommendations, the sources of those funds, and how those funds and sources have changed since the department's last report.

(2) A quantitative assessment of the impact of these actions, since the last report, on all of the following:

(A) The waiver rate.

(B) The percentage of all inspections performed pursuant to subdivision (a) of Section 44012 which were incorrectly or incompletely performed.

(C) The percentage of repairs to emission control devices and systems which were incorrectly or incompletely performed.

(D) The percentage of enforcement investigations which result in

issuance of a citation or imposition of any other penalty.

(3) An identification and assessment of whether any additional actions or funds are required to achieve any specific performance or emission reduction objectives identified in the review committee report.

The department shall provide the review committee and the state board an opportunity to comment on the draft annual report prepared under this subdivision, and any written comments of the state board or the review committee shall be included in the final report submitted to the Legislature.

(b) The department shall conduct a review of the effect of exempting vehicles which, within 90 days prior to a change of ownership, passed a biennial smog inspection. The review shall include the evaluation of the emission reductions. Where appropriate, based upon the findings, the department may exempt these vehicles from the requirements of subdivision (a) of Section 4000.1 of the Vehicle Code.

(c) A review committee is hereby created to analyze the effect of the program on motor vehicle emissions and air quality. The review committee shall consist of a representative from the state board and a representative from each of the districts in which the motor vehicle inspection program has been implemented.

(1) The committee shall elect one of its members as its chairperson. The members of the committee shall receive no compensation, but shall be reimbursed by the department for their actual and necessary expenses in performing committee duties. The state board and the department shall provide the committee the necessary technical and clerical support in its evaluation of program effectiveness.

(2) The committee shall schedule and conduct periodic meetings in the performance of its duties, and shall meet and consult with local, state, and federal officials involved in the evaluation of motor vehicle inspection and maintenance programs.

(d) The committee shall conduct at least one public hearing prior to submitting its report to the Legislature and shall include pertinent information which it receives from the public hearings in its report. The first report shall be submitted not later than 36 months following the implementation of the program. Thereafter, the committee shall submit periodic written reports to the Legislature on the program at least every 24 months. The committee's reports shall quantify the reduction in emissions and improvement in air quality attributed to the program.

(e) In those areas where testing for oxides of nitrogen emissions has not been implemented, the committee shall determine whether the average emissions of hydrocarbons and carbon monoxide from inspected vehicles is at least 25 percent less than the average of those emissions without the program.

(f) In those areas where testing for oxides of nitrogen emissions has been implemented, the committee shall determine whether the

average emissions from inspected motor vehicles is at least 40 percent less for hydrocarbons, at least 25 percent less for carbon monoxide, and at least 20 percent less for oxides of nitrogen, than the average of those emissions without the program. If the committee determines that the average percentage reduction in emissions from inspected motor vehicles is less than the percentages specified in subdivision (e) or (f), as the case may be, the report shall include specific recommendations for improving the emissions reduction effectiveness and administration of the program. Where possible, specific recommendations shall include quantitative performance objectives which the committee has determined are reasonably achievable and which are based on the program's achieving the maximum emissions reduction. The department shall take all feasible actions to implement the committee's recommendations as expeditiously as practical.

SEC. 20.5. Section 44051 of the Health and Safety Code is amended to read:

44051. The civil penalty for a violation of the specified provisions of this chapter is as follows:

Section	Short Description of Violation	Civil Penalty Minimum	Civil Penalty Maximum
44002	Smog check estimates and invoices	$ 50	$ 500
44012	No emission control system inspection, no emissions test, or inspection test procedures	250	1,500
44014	Unlicensed smog check station	250	1,500
44015	Failure to issue certificate signed by licensed inspector	150	1,000
44016	Failure to follow established repair procedures	150	1,000
44017	Cost limitation requirement	150	1,000
44031.5	Test/repair by unlicensed smog check station or nonqualified smog check mechanic, or licensed inspector required	250	1,500
44032	Qualified smog check mechanic required	250	500
44033	Smog check station requirement, test on condition of mandatory repair waiver, written estimate requirements	250	1,500

44036	Smog check station certified equipment requirement	150	1,500
44060	Sale, transfer, or purchase of certificate and certificate charges	250	1,500

SEC. 21. Section 44051.5 of the Health and Safety Code is amended to read:

44051.5. The civil penalty for a violation of the specified sections of Title 16 of the California Code of Regulations is as follows:

	Short Description	Civil Penalty	
Section	of Violation	Minimum	Maximum
3340.10	Unlicensed operation of smog check station	$250	$1,500
3340.15	Smog check station general requirements	100	500
3340.16	Smog check station equipment and testing procedures	150	1,000
3340.16.5	Smog check station equipment and testing procedures	150	1,000
3340.17	Smog check station equipment maintenance and calibration	150	1,000
3340.22	Smog check station sign requirement	100	500
3340.22.1	Sign restrictions	100	500
3340.23	Smog check cease operations	250	1,500
3340.25	Licensed inspector requirement	150	1,000
3340.30	Qualified mechanic's training and certification requirement	100	500
3340.35	Certification of compliance and noncompliance requirement	250	1,500
3340.37	NOx device/sticker requirement	100	500
3340.41	Inspection/test/repair requirement	150	1,000

3340.41.3	Invoice requirements	100	500
3340.42	Inspection standards, test procedures, and exhaust emissions requirement	100	500
3340.45	Cost limitation requirement	100	500

SEC. 22. Section 44053 of the Health and Safety Code is amended to read:

44053. (a) Any person issued a citation pursuant to Section 44050 may request a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A request for a hearing shall be submitted in writing within 30 days of service of the citation, and shall be delivered to the office of the department in Sacramento. Hearings and related procedures under this section shall be conducted in the same manner as proceedings for adjudication of an accusation under that Chapter 5, except as otherwise specified in this article.

(b) If, within 30 days from service of the citation, the licensee or fleet owner licensed pursuant to Section 44020 or qualified mechanic fails to request a hearing, the citation shall be deemed the final order of the department.

SEC. 23. Section 44060 of the Health and Safety Code is amended to read:

44060. (a) The department shall prescribe the form of the certificate of compliance or noncompliance. The department shall charge a fee to licensed smog check stations for the issuance by the department to the stations of certificate of compliance or noncompliance forms. The fee charged shall be calculated to allow funding of the department and any other state agency directly involved in the implementation of the motor vehicle inspection program, and shall not exceed the amount reasonably necessary to fund the operation of the program, including all responsibilities, requirements, and obligations imposed upon the department or any of those state agencies by this chapter, which are not otherwise recoverable by license fees pursuant to Section 44034. Except for adjustments to reflect changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics, the fee for each certificate of compliance or noncompliance shall not exceed seven dollars ($7). It is the intent of the Legislature that a prudent surplus be maintained in the Vehicle Inspection and Repair Fund. If the surplus exceeds reasonable costs of administration of the programs specified in this chapter and in Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, the department shall, by regulation, prescribe a lower fee for the certificate of compliance or noncompliance.

(b) The sale or transfer of any certificate of compliance or noncompliance by a licensed smog check station to any other licensed smog check station or any other person, and the purchase

or acquisition of any certificate of compliance or noncompliance by any person, other than from the department, the department's designee, or pursuant to a vehicle inspection or repair conducted pursuant to this chapter, is prohibited.

(c) The fee charged by licensed stations to consumers for a certificate of compliance or a certificate of noncompliance shall be the same amount charged by the department.

SEC. 24. Section 27159 is added to the Vehicle Code, to read:

27159. Any uniformed member of the California Highway Patrol may order a vehicle stored when it is located within the territorial limits in which the member may act if requested by a representative of the State Air Resources Board to remove the vehicle from service pursuant to subdivision (f) of Section 44011.6 of the Health and Safety Code. All towing and storage fees for a vehicle removed under this section shall be paid by the owner.

CHAPTER 1434

An act to repeal and add Section 5703 of the Government Code, relating to public bonds.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 5703 of the Government Code is repealed.

SEC. 2. Section 5703 is added to the Government Code, to read:

5703. (a) Except as provided in subdivisions (b), (c), and (d), the Treasurer, in exercising the duties of agent for offering and selling bonds, whose duties include, among others, establishing the timing of a sale, preparation or approval of the documentation for the sale, sole authority to select the underwriters for negotiating the sale, and executing the bond purchase agreement on behalf of the state or the state's agencies, is responsible for developing and implementing a competitive process for selection of underwriters for negotiated offerings of bonds. The competitive process may be conducted on a issue-by-issue basis or to establish one or more pools of underwriters for various types of issues. The competitive process shall have at least all of the following features:

(1) Solicitation of written qualifications from at least 20 underwriting firms.

(2) Consideration of the goals for minority and women business enterprise participation in professional bond services contracts.

(3) The written submissions shall be available for inspection at the office of the Treasurer for a period of at least six months.

(4) If a pool of underwriters is established, the competitive process shall be repeated at least every 24 months to reestablish the

pool of underwriters.

(b) For negotiated offerings of bonds by state financing authorities which act as conduits to provide financing to other public, nonprofit, or private organizations, the Treasurer shall use the competitive process described in subdivision (a) to establish one or more pools of underwriters for each financing authority. The Treasurer may make additions to a pool without competitive solicitation, on a case-by-case determination upon the recommendation of a project applicant, where the Treasurer finds that the underwriter to be added has provided significant services to the project applicant with the expectation of compensation for those services from underwriting the revenue bonds which will fund the applicant's project.

(c) The Treasurer may select underwriters for a negotiated sale of bonds by means other than as described in subdivision (a) if the Treasurer makes a written finding that extraordinary market conditions do not allow enough time to comply with subdivision (a) without risking financial detriment to the state.

(d) Subdivisions (a), (b), and (c) shall not apply to the issuance of state bonds for which the Treasurer is precluded by statute from selecting underwriters.

(e) For negotiated sales, the Treasurer shall maintain records of all cost information pertinent to the initial offering of all state bonds, except that in the case of bonds issued by a state financing authority, as described in subdivision (b), the issuing state financing authority shall instead be responsible for maintaining the same cost information on bonds it has issued. The information shall include, but not be limited to, all of the following:

(1) All amounts paid out of bond proceeds to the underwriter, detailed by management fee, takedown, risk, and underwriter's expenses.

(2) All costs paid out of bond proceeds to rating agencies for rating of the bonds.

(3) All fees paid out of bond proceeds to bond counsels, trustees, or financial advisors relating to the initial offering of the bonds.

(4) The interest rate to be paid on the bonds.

(f) For competitive sales, the Treasurer shall maintain records of all bids submitted and the documentation of bid verifications including the terms of sale and the calculation of net interest cost or true interest cost.

(g) The Auditor General shall audit the cost records required to be maintained pursuant to subdivision (e) and conduct a review of the records required to be maintained pursuant to subdivision (f).

(h) The Auditor General shall report whether this section is being fully implemented. The Auditor General shall make cost and interest rate comparisons with similar initial bond offerings of other states where possible. The Auditor General shall submit a report to the Legislature on March 1, 1993, and March 1, 1995, for bonds sold during the two calendar years immediately preceding the year in

which the report is due.

CHAPTER 1435

An act to add Article 2 (commencing with Section 13100) to Chapter 2 of Division 3 of Title 2 of the Government Code, relating to capital outlay planning.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Article 2 (commencing with Section 13100) is added to Chapter 2 of Division 3 of Title 2 of the Government Code, to read:

Article 2. Capital and Infrastructure Project Planning

13100. The Director of Finance shall prepare a report projecting the state's potential need for the financing of major capital outlay projects and infrastructure projects for the period January 1, 1991, through December 31, 2000, inclusive. This report shall be updated annually so that it projects the state's potential need for the 10-year period beyond January 1 of the year in which the updated report is due.

13101. The report and updates required by Section 13100 shall identify the proposed funding sources for all projects by general obligation bonds, revenue bonds, lease purchase, installment purchase, and other means.

13102. All state agencies shall cooperate with the Director of Finance in preparing and providing information necessary for this report and updates.

13103. The report shall be submitted to the Governor, the Treasurer, the Senate Appropriations Committee, the Senate Budget and Fiscal Review Committee, the Assembly Ways and Means Committee, and the Joint Legislative Budget Committee by February 1, 1991, and the updates by February 1 of each year thereafter, for their use in planning and policymaking for the state.

13104. It is the intent of the Legislature that the report and updates required by this article be used to plan for the state's long-term financing needs in a manner which will protect the financial integrity of the state.

CHAPTER 1436

An act to add Sections 18041.5 and 24955 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The United States Department of Housing and Urban Development (HUD) is not going to renew contracts with certain owners of low-income housing.

(b) This HUD action will result in thousands of low-income California residents becoming homeless.

It is, therefore, the intent of the Legislature to provide incentives for HUD contractors to not evict the low-income tenants. These incentives shall include contractor benefits which encourage tenant assumption of ownership of the housing complex.

SEC. 2. It is the intent of the Legislature to exempt owners from local site development standards that are not for the purpose of health and safety, when the owner converts the property to condominium interests and sells 50 percent or more of the units to existing lower income residents. It is also the intent of the Legislature to place before the voters a constitutional amendment to authorize low-income and very low income tenants who purchase their residence, to defer the portion of the property tax assessment attributable to the increased assessed value until the property is sold by the low-income owner.

SEC. 3. Section 18041.5 is added to the Revenue and Taxation Code, to read:

18041.5. (a) No gain shall be recognized with respect to a sale of an assisted housing development to a tenant association, nonprofit organization, profit-motivated organization or individual, or public agency which obligates itself and any successors in interest to maintain the assisted housing development affordable to persons or families of lower income or very low income for either a period of 30 years from the date of sale or the remaining term of existing federal government assistance as listed in subdivision (a) of Section 65863.10 of the Government Code, whichever is greater, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale. This obligation shall be recorded at the time of sale in the office of the county recorder of the county in which the development is located.

(b) No gain shall be recognized with respect to a sale of a majority

or more of units in an assisted housing development converted to condominium interests, to a tenant association, nonprofit organization, profit-motivated organization or individual, or public agency which obligates itself and any successors in interest to maintain the condominiums affordable to persons or families of lower income or very low income for either a period of 30 years from the date of sale or the remaining term of existing federal government assistance as listed in subdivision (a) of Section 65863.10 of the Government Code, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale. This obligation shall be recorded at the time of sale in the office of the county recorder of the county in which the development is located.

(c) No gain shall be recognized with respect to a sale of real property to a majority or more of existing lower income and very low income residents of that property, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale.

(d) No gain shall be recognized with respect to a sale of a majority or more of units converted to condominium interests to the existing lower income or very low income residents of that property, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale.

(e) For purposes of this section:

(1) "Assisted housing development" means a multifamily rental housing development that receives federal government assistance, appearing of record and containing a legal description of the property, as defined in subdivision (a) of Section 65863.10 of the Government Code.

(2) "Tenant association" means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization; or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development, real property, or condominium and which represents the interests of at least a majority of the tenants in the assisted housing development, real property, or condominium.

(3) "Nonprofit organization" means a not-for-profit corporation organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, which has as its principal purpose the ownership, development, or management of housing or community development projects for persons and families of lower income and very low income, and which has a broadly representative board, a majority of whose members are community-based and has a proven track record of community service.

(4) "Public agency" means a housing authority, redevelopment agency, or any other agency of a city, county, or city and county, whether general law or chartered, which is authorized to own, develop, or manage housing or community development projects for

persons and families of lower income and very low income.

(5) "Regional or national organization" means a not-for-profit, charitable corporation organized on a multicounty, state, or multistate basis which has as its principal purpose the ownership, development, or management of housing or community development projects for persons and families of lower income and very low income.

(6) "Regional or national agency" means a multicounty, state, or multistate agency which is authorized to own, develop, or manage housing or community development projects for persons and families of lower income and very low income.

(7) "Profit-motivated organization or individual" means an individual or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Division 1 (commencing with Section 15001) of Title 2 of, the Corporations Code, which carries on as a business for profit.

(8) "Lower income" means those residents having an income as defined by Section 50079.5 of the Health and Safety Code.

(9) "Very low income" means those residents having an income as defined by Section 50105 of the Health and Safety Code.

(10) "Resident" means a tenant or other person who lawfully occupies a unit located in a qualified low-income housing project as defined under Section 17058, and whose income qualifies as lower income or very low income.

(11) "Condominium" means the interest in real property defined in Section 783 of the Civil Code.

(f) If the purchase of residential real property results in the nonrecognition of gain on the sale of an assisted housing development, real property, or condominium under subdivision (a), (b), (c), or (d), in determining the adjusted basis of the purchased residential real property as of any time following the sale of the assisted housing development, real property, or condominium, the adjustments to the basis shall include a reduction by an amount equal to the amount of the gain not so recognized on the sale of the assisted housing development, real property, or condominium. If more than one parcel of residential real property has been purchased, the nonrecognized gain from the sale of the assisted housing development, real property, or condominium shall be attributed to the parcels of residential real property on a pro rata basis based upon the purchase prices of those parcels.

(g) In accordance with subdivision (a), (b), (c), or (d), if the sale of an assisted housing development, real property, or condominium results in a gain during the taxable year, then all of the following shall apply:

(1) The statutory period for the assessment of any deficiency attributable to any part of the gain shall not expire before the expiration of four years from the date the Franchise Tax Board is notified (on the form as the Franchise Tax Board may provide) of

one of the following:

(A) The cost of purchasing the residential real property which satisfies the requirement of subdivision (a), (b), (c), or (d), and results in the nonrecognition of gain.

(B) The intention not to reinvest all of the proceeds from the sale in residential real property within the period specified in subdivision (a), (b), (c), or (d).

(C) The failure to reinvest all of the proceeds from the sale in residential real property within the period specified in subdivision (a), (b), (c), or (d).

(2) The deficiency may be assessed before the expiration of the period specified in paragraph (1), notwithstanding the provisions of any other law or rule of law which would otherwise prevent the assessment.

(3) All information regarding the sale of an assisted housing development, real property, or condominium, at a gain in accordance with subdivision (a), (b), (c), or (d), shall be disclosed in the return for the taxable year in which the sale took place in order to determine if the sale qualifies and the amount of nonrecognition of gain qualifies under subdivision (a), (b), (c), or (d).

(h) The Department of Housing and Community Development shall do all of the following:

(1) Certify that the lower income or very low income resident meets the definitions provided in paragraphs (8) and (9) of subdivision (e).

(2) Provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the Franchise Tax Board and the Department of Housing and Community Development, of the names and identification numbers of the persons who are members of the group of purchasers who are lower income or very low income residents that were issued a certification, and the names and identification numbers of the sellers of the property.

(3) Provide the group of purchasers who are lower income or very low income residents a copy of the certification.

(i) The group of purchasers who are lower income or very low income residents shall do all of the following:

(1) Provide the Department of Housing and Community Development with documents, as deemed necessary by the department, verifying the income of each member of the group.

(2) Provide a copy of the certification to the seller of the assisted housing development, real property, or condominium.

(3) Retain a copy of the certification.

(j) The seller of the assisted housing development, real property, or condominium shall do all of the following:

(1) Obtain a copy of the certification from the group of purchasers who are lower income or very low income residents of the assisted housing development, real property, or condominium.

(2) Retain a copy of the group's lower income or very low income certification for tax purposes.

SEC. 4. Section 24955 is added to the Revenue and Taxation Code, to read:

24955. (a) No gain shall be recognized with respect to a sale of an assisted housing development to a tenant association, nonprofit organization, profit-motivated organization or individual, or public agency which obligates itself and any successors in interest to maintain the assisted housing development affordable to persons or families of lower income or very low income for either a period of 30 years from the date of sale or the remaining term of existing federal government assistance as listed in subdivision (a) of Section 65863.10 of the Government Code, whichever is greater, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale. This obligation shall be recorded at the time of sale in the office of the county recorder of the county in which the development is located.

(b) No gain shall be recognized with respect to a sale of a majority or more of units in an assisted housing development converted to condominium interests, to a tenant association, nonprofit organization, profit-motivated organization or individual, or public agency which obligates itself and any successors in interest to maintain the condominiums affordable to persons or families of lower income or very low income for either a period of 30 years from the date of sale or the remaining term of existing federal government assistance as listed in subdivision (a) of Section 65863.10 of the Government Code, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale. This obligation shall be recorded at the time of sale in the office of the county recorder of the county in which the development is located.

(c) No gain shall be recognized with respect to a sale of real property to a majority or more of existing lower income and very low income residents of that property, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale.

(d) No gain shall be recognized with respect to a sale of a majority or more of units converted to condominium interests to the existing lower income or very low income residents of that property, provided that all of the proceeds from the sale are reinvested in residential real property, other than a personal residence, in this state within two years after the sale.

(e) For purposes of this section:

(1) "Assisted housing development" means a multifamily rental housing development that receives federal government assistance, appearing of record and containing a legal description of the property, as defined in subdivision (a) of Section 65863.10 of the Government Code.

(2) "Tenant association" means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other

entity or organization; or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development, real property, or condominium and which represents the interests of at least a majority of the tenants in the assisted housing development, real property, or condominium.

(3) "Nonprofit organization" means a not-for-profit corporation organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, which has as its principal purpose the ownership, development, or management of housing or community development projects for persons and families of lower income and very low income, and which has a broadly representative board, a majority of whose members are community-based and has a proven track record of community service.

(4) "Public agency" means a housing authority, redevelopment agency, or any other agency of a city, county, or city and county, whether general law or chartered, which is authorized to own, develop, or manage housing or community development projects for persons and families of lower income and very low income.

(5) "Regional or national organization" means a not-for-profit, charitable corporation organized on a multicounty, state, or multistate basis which has as its principal purpose the ownership, development, or management of housing or community development projects for persons and families of lower income and very low income.

(6) "Regional or national agency" means a multicounty, state, or multistate agency which is authorized to own, develop, or manage housing or community development projects for persons and families of lower income and very low income.

(7) "Profit-motivated organization or individual" means an individual or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Division 1 (commencing with Section 15001) of Title 2 of, the Corporations Code, which carries on as a business for profit.

(8) "Lower income" means those residents having an income as defined by Section 50079.5 of the Health and Safety Code.

(9) "Very low income" means those residents having an income as defined by Section 50105 of the Health and Safety Code.

(10) "Resident" means a tenant or other person who lawfully occupies a unit located in a qualified low-income housing project as defined under Section 23610.5, and whose income qualifies as lower income or very low income.

(11) "Condominium" means the interest in real property defined in Section 783 of the Civil Code.

(f) If the purchase of residential real property results in the nonrecognition of gain on the sale of an assisted housing development, real property, or condominium under subdivision (a), (b), (c), or (d), in determining the adjusted basis of the purchased residential real property as of any time following the sale of the

assisted housing development, real property, or condominium, the adjustments to the basis shall include a reduction by an amount equal to the amount of the gain not so recognized on the sale of the assisted housing development, real property, or condominium. If more than one parcel of residential real property has been purchased, the nonrecognized gain from the sale of the assisted housing development, real property, or condominium shall be attributed to the parcels of residential real property on a pro rata basis based upon the purchase prices of those parcels.

(g) In accordance with subdivision (a), (b), (c), or (d), if the sale of an assisted housing development, real property, or condominium results in a gain during the income year, then all of the following shall apply:

(1) The statutory period for the assessment of any deficiency attributable to any part of the gain shall not expire before the expiration of four years from the date the Franchise Tax Board is notified (on the form as the Franchise Tax Board may provide) of one of the following:

(A) The cost of purchasing the residential real property which satisfies the requirement of subdivision (a), (b), (c), or (d), and results in the nonrecognition of gain.

(B) The intention not to reinvest all of the proceeds from the sale in residential real property within the period specified in subdivision (a), (b), (c), or (d).

(C) The failure to reinvest all of the proceeds from the sale in residential real property within the period specified in subdivision (a), (b), (c), or (d).

(2) The deficiency may be assessed before the expiration of the period specified in paragraph (1), notwithstanding the provisions of any other law or rule of law which would otherwise prevent the assessment.

(3) All information regarding the sale of an assisted housing development, real property, or condominium, at a gain in accordance with subdivision (a), (b), (c), or (d), shall be disclosed in the return for the income year in which the sale took place in order to determine if the sale qualifies and the amount of nonrecognition of gain qualifies under subdivision (a), (b), (c), or (d).

(h) The Department of Housing and Community Development shall do all of the following:

(1) Certify that the lower income or very low income resident meets the definitions provided in paragraphs (8) and (9) of subdivision (e).

(2) Provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the Franchise Tax Board and the Department of Housing and Community Development, of the names and identification numbers of the persons who are members of the group of purchasers who are lower income or very low income residents that were issued a certification, and the names and

identification numbers of the sellers of the property.

(3) Provide the group of purchasers who are lower income or very low income residents a copy of the certification.

(i) The group of purchasers who are lower income or very low income residents shall do all of the following:

(1) Provide the Department of Housing and Community Development with documents, as deemed necessary by the department, verifying the income of each member of the group.

(2) Provide a copy of the certification to the seller of the assisted housing development, real property, or condominium.

(3) Retain a copy of the certification.

(j) The seller of the assisted housing development, real property, or condominium shall do all of the following:

(1) Obtain a copy of the certification from the group of purchasers who are lower income or very low income residents of the assisted housing development, real property, or condominium.

(2) Retain a copy of the group's lower income or very low income certification for tax purposes.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1437

An act to add and repeal Section 65863.11 of the Government Code, relating to housing.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 65863.11 is added to the Government Code, to read:

65863.11. (a) Terms used in this section shall be defined as follows:

(1) "Assisted housing development" and "development" mean a multifamily rental housing development as defined in subdivision (a) of Section 65863.10, which has a statement indicating that it is an assisted housing development contained in the legal description of the property recorded and indexed in the grantor-grantee index of the county in which the development is located.

(2) "Owner" means an individual, corporation, association, partnership, joint venture, or business entity which holds title to an assisted housing development.

(3) "Tenant" means a tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the assisted housing development.

(4) "Tenant association" means a group of tenants who have

formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development and which represents the interest of at least a majority of the tenants in the assisted housing development.

(5) "Low or moderate income" means having an income as defined in Section 50093 of the Health and Safety Code.

(6) "Very low income" means having an income as defined in Section 50052.5 of the Health and Safety Code.

(7) "Local nonprofit organizations" means not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, which have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community-based and have a proven track record of local community service.

(8) "Local public agencies" means housing authorities, redevelopment agencies, or any other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(9) "Regional or national organizations" means not-for-profit, charitable corporations organized on a multicounty, state, or multistate basis which have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income.

(10) "Regional or national public agencies" means multicounty, state, or multistate agencies which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(11) "Use restriction" means any federal, state, or local statute, regulation, ordinance, or contract which, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development; or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

(12) "Profit-motivated organizations and individuals" means individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Division 1 (commencing with Section 15001) of Title 2 of, the Corporations

Code, which carries on as a business for profit.

(13) "Department" means the Department of Housing and Community Development.

(b) An owner of an assisted housing development who has not, prior to January 1, 1991, given notice of intent to terminate a subsidy contract or prepay the mortgage pursuant to Section 65863.10, shall not sell, or otherwise dispose of the development in a manner which would result in either (1) a discontinuance of its use as an assisted housing development, or (2) the termination of any low-income use restrictions which apply to the development, unless the owner or its agent proposing the removal of government assistance shall first have provided each of the entities, listed in subdivision (c), an opportunity to purchase the development at a price and upon terms which represent a bona fide intention to sell, in compliance with subdivision (g).

(c) The entities to whom an opportunity to purchase shall first be provided include the following:

(1) The tenant association of the development.

(2) Local nonprofit organizations and public agencies.

(3) Regional or national nonprofit organizations and regional or national public agencies.

(4) Profit-motivated organizations or individuals.

(d) For the purposes of this section, to qualify as a purchaser of an assisted housing development, an entity listed in subdivision (c) shall do all of the following:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by itself or through a management agent.

(2) Agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for persons and families of low or moderate income and very low income for either a 30-year period from the date that the purchaser took legal possession of the housing or the remaining term of the existing federal government assistance specified in subdivision (a) of Section 65863.10, whichever is greater. The development shall be continuously occupied in the approximate percentages that those persons and families occupied that development on the date the owner gave notice of intent or the approximate percentages specified in existing use restrictions, whichever is higher. This obligation shall be recorded prior to the close of escrow in the office of the county recorder of the county in which the development is located and shall contain a legal description of the property, indexed to the name of the owner as grantor.

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development.

(e) If an assisted housing development is not economically feasible, as defined in paragraph (3) of subdivision (h) of Section

17058 of the Revenue and Taxation Code, a purchaser shall be entitled to remove one or more units from the rent and occupancy requirements as is necessary for the development to become economically feasible, provided that once the development is again economically feasible, the purchaser shall designate the next available units as low-income units up to the original number of those units.

(f) If an owner decides to sell, or otherwise dispose of the assisted housing development pursuant to subdivision (b), at least one year prior to the anticipated date of termination of a subsidy contract or mortgage prepayment of a development which would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination of any low-income use restrictions which apply to the development, the owner shall first give notice of his or her bona fide intention to sell, or otherwise dispose of the development to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (p), as well as to those qualified entities which directly contact the owner. The notice shall conform to the requirements of subdivision (g) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post a copy of the notice in a conspicuous place in the common area of the development.

If the owner already has a bona fide offer to purchase from a qualified entity, at the time the owner decides to sell, or otherwise dispose of the development, the owner shall not be required to comply with the provisions of this subdivision.

(g) The initial notice of a bona fide intention to sell shall contain all of the following:

(1) The sales price; the terms of assumable financing, if any; the terms of the subsidy contract, if any; and proposed improvements to the property to be made by the owner in connection with the sale, if any.

(2) A statement that each of the type of entities listed in subdivision (c) has the right to purchase the development under this section in the order and according to the priorities established in subdivision (h).

(3) A statement that the owner will make available to each of the type of entities listed in subdivision (c), within 15 business days of receiving a request therefor, itemized lists of monthly operating expenses, capital improvements as determined by the owner made within each of the two preceding calendar years, the amount of project reserves, and copies of the two most recent financial and physical inspection reports on the development, if any, filed with the federal, state, or local agencies.

(4) A statement that the owner will make available to each of the entities listed in subdivision (c), within 15 business days of a request therefor, the most recent rent roll listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date

the notice of intent was made pursuant to Section 65863.10, and a statement of the vacancy rate at the development for each of the two preceding calendar years.

(5) A statement that the owner has satisfied all notice requirements pursuant to subdivision (b) of Section 65863.10.

(h) If a qualified entity elects to purchase an assisted housing development, it shall make a bona fide offer to purchase the development within 180 days from the date of an owner's bona fide intention to sell. A qualified entity's bona fide offer to purchase shall identify whether it is a tenant association, nonprofit organization, public agency, or profit-motivated organizations or individuals and shall certify, under penalty of perjury, that it is qualified pursuant to subdivision (d). During the first 120 days from the date of an owner's bona fide notice of intention to sell, an owner shall only accept a bona fide offer to purchase from the tenant association. If at the end of the first 120-day period no purchase agreement has been executed, the owner may accept a bona fide offer to purchase from any qualified entity specified in subdivision (c) during the remaining 60 days.

(i) If at the end of that 180-day period no purchase agreement has been executed and a person or entity other than those entities listed in subdivision (c) has offered to purchase, or otherwise acquire the development, and the owner of the development has complied with the provisions of this section and Section 65863.10, the owner may accept a bona fide offer to purchase from this person or entity.

(j) When a bona fide offer to purchase has been made to an owner in response to a bona fide intention to sell, and the offer is accepted, a purchase agreement shall be executed.

(k) Either the owner or the qualified entity may request that the fair market value of the property, as a development, be determined by an independent appraiser qualified to perform multifamily housing appraisals, who shall be selected and paid by the requesting party. All appraisers shall possess qualifications equivalent to those required by the Members of the Appraisers Institute. This appraisal shall be nonbinding on either party with respect to the sales price of the development offered in the bona fide intention to sell, the bona fide offer to purchase, or the acceptance or rejection of either.

(*l*) During the 180-day period following the initial 180-day period required pursuant to subdivision (h), an owner may accept an offer from a person or an entity that does not qualify under subdivision (d), provided that the acceptance does not conflict with applicable federal laws governing who may purchase an assisted housing development. This acceptance shall be made subject to the owner providing each qualified entity that made a bona fide offer to purchase the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless these terms and conditions are modified by mutual consent. The owner shall notify in writing those qualified entities of the terms and conditions of the pending offer to purchase, sent by registered or certified mail, return receipt requested. The qualified entity shall

have 15 days from the date the notice is mailed to submit a bona fide offer to purchase and that offer shall be accepted by the owner. The owner shall not be required to comply with the provisions of this subdivision if the person or the entity making the offer during this time period agrees to maintain the development for persons and families of low and moderate income and very low income, in accordance with the provisions of paragraph (2) of subdivision (d).

(m) This section shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or an owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the first right of refusal requiring immediate access to the proceeds of the sale of the development. The certification shall be made pursuant to subdivision (o).

(n) An owner, at any time during the one-year period subsequent to giving notice of the bona fide intention to sell in accordance with subdivision (f), may decide not to sell, or otherwise dispose of the development and may withdraw the notice of intention to sell. However, at any time that the owner again decides to sell, or otherwise dispose of the development, the provisions of this section shall apply.

(o) Prior to the close of escrow, an owner selling, leasing, or otherwise disposing of a development to a purchaser who does not qualify under subdivision (d) shall certify under penalty of perjury that the owner has complied with all provisions of this section and Section 65863.10. This certification shall be recorded and shall contain a legal description of the property, shall be indexed to the name of the owner as grantor, and may be relied upon by good faith purchasers and encumbrancers for value and without notice of a failure to comply with the provisions of this section.

Any person or entity acting solely in the capacity of an escrow agent for the transfer of real property subject to this section shall not be liable for any failure to comply with this section unless the escrow agent either had actual knowledge of the requirements of this section or acted contrary to written escrow instructions concerning the provisions of this section.

(p) The department shall undertake the following responsibilities and duties:

(1) Publish a form by April 1, 1991, containing a summary of rights and obligations under this section and make that information available to owners of assisted housing developments as well as to tenant associations, local nonprofit organizations, regional or national nonprofit organizations, public agencies, and other entities with an interest in preserving the state's subsidized housing.

(2) Compile, maintain, and update a list of entities in subdivision (c) that have either contacted the department with an expressed

interest in purchasing a development in the subject area or have been identified by the department as potentially having an interest in participating in a right-of-first-refusal program. The department shall publicize the existence of the list statewide. The initial list shall be developed by February 1, 1991. Within five working days of the date of receipt of a notice of intent under Section 65863.10, the department shall send the list by registered or certified mail to the owner proposing the termination or removal of government assistance. If the department sends the list after the five-working-day period passes, the 180-day period specified in subdivision (h) shall be reduced by the number of days the department is late in sending the list, with any reduction being made to the initial 120-day period. If the department does not send the list at any time, the owner shall only be required to send a written copy of the bona fide intention to sell to the qualified entities which directly contact the owner and to post a copy of the intention to sell in the common area pursuant to subdivision (f).

(q) The provisions of this section may be enforced either in law or in equity by any qualified entity entitled to exercise the right-of-first-refusal under this section, that has been adversely affected by an owner's failure to comply with the provisions of this section.

An owner shall be entitled to rely on the statements, claims, or representations of any person or entity that the person or entity is a qualified entity as specified in subdivision (c), unless the owner has actual knowledge that the purchaser is not a qualified entity. If the person or entity is not an entity as specified in subdivision (c), that fact, in the absence of actual knowledge as described in the preceding sentence of this subdivision, shall not give rise to any claim against the owner for a violation of this section.

(r) It is the intent of the Legislature that the provisions of this section are in addition to, but not preemptive of, applicable federal laws governing the sale, or other disposition of a development which would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination of any low-income use restrictions which apply to the development.

(s) This section shall remain in effect only until December 31, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before December 31, 1995, deletes or extends that date.

CHAPTER 1438

An act to amend and repeal Section 65863.10 of the Government Code, and to add Chapter 14 (commencing with Section 50850) to Part 2 of Division 31 of the Health and Safety Code, relating to housing.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 65863.10 of the Government Code is amended to read:

65863.10. (a) As used in this section, "assisted housing development" means a multifamily rental housing development that receives governmental assistance under any of the following federal programs:

(1) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(2) The following programs under the following sections of the National Housing Act:

(A) Section 213 (12 U.S C. Sec. 1715e).

(B) The Below-Market-Interest-Rate Program under Section 221(d)(3) (12 U.S.C. Sec. 1715(*l*)(d)(3) and (d)(5)).

(C) Section 236 (12 U.S.C. Sec. 1715z-1).

(D) Section 202 (12 U.S.C. Sec. 1701q).

(3) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965 (Public Law 89-117), as amended.

(4) Programs under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

(b) At least one year prior to the anticipated date of termination of a subsidy contract or mortgage prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance shall provide a notice of the change to each affected tenant household residing in the assisted housing development at the time the notice is provided. The notice shall contain (1) the anticipated date of the termination or prepayment of the programs contained in subdivision (a); (2) the anticipated rent increase subsequent to the date of the prepayment or termination of the program; (3) a statement that a copy of the notice will be sent to the city or county where the assisted housing development is located; (4) a statement that a public hearing may be held by the city or county on the issue and that the tenant will receive notice of the hearing at least 15 days in advance; (5) a statement of the possibility that the housing may remain in the

federal program after the date of subsidy termination or prepayment under certain circumstances; and (6) the telephone number of the department which can be contacted to request additional written information. The same notice also shall be filed at the same time with the legislative body of the city in which the assisted housing development is located or, if located in an unincorporated area, the legislative body of the county, and with the local housing authority, if one exists. The city or county shall, upon receipt of the notice, send a copy of the notice to the Department of Housing and Community Development.

(c) In addition to information provided in the notice to the affected tenant, the notice to the appropriate city or county also shall contain information regarding the number of affected tenants in the project, the number of units that are government assisted, the number of the units that are not government assisted, the number of bedrooms in each unit that is government assisted and the ages, income, and ethnic or racial categories of the affected tenants. The notice as also required by subsection (a) of Section 248.211 of Subpart B of Part 248 of Volume 24 of the Code of Federal Regulations, shall briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained, the reason the owner seeks to terminate the subsidy contract or prepay the mortgage, and any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice. The information contained in the notice shall be based on data that is reasonably available from existing tenant written records. As used in this section, "affected tenant" means a tenant household residing in an assisted housing development which, at the time the notice is provided, benefits from the government assistance.

This section shall not require the owner to obtain or acquire additional information that is not contained in the existing tenant records. The owner shall not be held liable for any inaccuracies contained in the tenant records or from other sources.

(d) The local legislative body may hold a public hearing which may be part of a regularly scheduled public hearing for the purpose of reviewing the notice provided pursuant to subdivision (b) for all assisted housing developments which consist of 25 or more units, except where the development is located in a rural area, as defined in Section 50101 of the Health and Safety Code, in which case the development shall consist of 10 or more units; and for determining the impact of the change upon the affected tenants and the locality's housing needs and its ability to meet those housing needs in accordance with the housing element required pursuant to subdivision (c) of Section 65583 of the Government Code. In making this determination, the local legislative body shall prepare a written report considering (1) the extent of displacement or economic hardship, if any, likely to result from the subsidy contract

termination or mortgage prepayment, which will cause the low- and moderate-income tenants occupying the assisted housing at the time of the notice to reasonably expect to be unable to remain in occupancy; (2) the availability of comparable, affordable, and nonassisted replacement housing in the market area or vacant assisted housing for which there is no waiting list, including the number and size of the units, their proximity to the assisted housing development, their rents and the approximate relocation costs of the affected tenants; and (3) the overall impact on the supply of that housing in the community, including replacement costs, and on the housing opportunities of minorities. The public hearing, if any, shall be held within 60 days of receipt of the notice by the city or county. Written notice of the time, date, and place of the hearing shall be given to each affected tenant household at least 15 days prior to the hearing date. Upon written request by the appropriate governmental agency responsible for approving or denying the prepayment or contract termination, the city or county shall send a copy of the written report to that agency.

(e) For purposes of this section, service of the notice to the affected tenants, the local legislative body, and the appropriate city or county housing authority by the owner pursuant to subdivision (b) and service of the notice to the affected tenants by the city or county pursuant to subdivision (c) shall be made by first-class mail postage prepaid.

(f) Nothing in this section shall enlarge or diminish in any way any power which a city, county, city and county, affected tenant, or owner may have, independent of this section.

(g) As used in this section, the term "city" means a general law city, a charter city, or a city and county.

(h) The provisions of this section may be enforced either at law or in equity by any person or entity entitled to receive notice under this section who is adversely affected by an owner's failure to comply with the provisions of this section.

(i) Termination of a subsidy contract or mortgage prepayment may occur prior to the anticipated date of that termination or prepayment if that termination or prepayment is approved under the applicable federal, state, or local laws governing the subsidies or mortgages and all other requirements of this section have been complied with.

(j) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1995, deletes or extends that date.

(k) It is the intent of this section to provide adequate notice to all the parties described above who are concerned with the termination of a subsidy contract or a mortgage prepayment on an assisted housing development. It is also the intent that conformance to these notification provisions shall meet the requirements of applicable federal statutes. However, this section shall not diminish any responsibility for notification under federal law.

SEC. 2. Chapter 14 (commencing with Section 50850) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 14. HOUSING PRESERVATION AND INFORMATION SERVICE

50850. The Legislature finds and declares that within the next 20 years nearly 117,000 units of low-income housing subsidized by the federal Department of Housing and Urban Development will be eligible for conversion to market rate housing. These subsidies include low-interest loan and mortgage insurance programs established pursuant to paragraph (3) of subdivision (d) of Section 221 and Section 236 of the National Housing Act of 1934 (12 U.S.C. Secs. 1715 and 1715z-1), as amended, rental subsidy programs established pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437), as amended. In addition, the Farmer's Home Administration operates a low-interest loan program established pursuant to Section 515 of the National Housing Act of 1949 (42 U.S.C. Sec. 1485), as amended. Federal law allows owners to convert these units at certain intervals prior to the expiration of the contracts. Should the owners of the units be allowed to prepay the federally subsidized loans or fail to renew the Section rental subsidies, these units are in danger of becoming unaffordable to lower income tenants since the owners would no longer be obligated to charge below market rate rents to the tenants. Thus, it is anticipated that there will be an enormous loss of affordable decent, safe, and sanitary housing for lower income persons.

The Legislature further finds that it is of paramount importance that prior to an owner being allowed to convert a federally subsidized building, tenants and other interested persons and organizations have access to information concerning buildings eligible for conversion and access to information concerning tenants' rights and housing preservation alternatives when the conversion is imminent. The information and assistance can aid in the deterrence of conversion of the existing affordable housing stock. The Legislature finds that the provision of information, accessible to the citizenry of the state, would address this need.

50851. The purpose of this chapter is to ensure all of the following:

(a) That pertinent information concerning buildings eligible for conversion is available to tenants of subsidized rental units, community organizations, local government agencies, and other interested persons.

(b) That information concerning the legal rights, responsibilities and options of owners and tenants when the conversion of a subsidized rental unit to a market rental rate is a likelihood, is provided to tenants of subsidized rental units, community organizations, local governmental agencies, and other interested persons.

(c) That information concerning available technical assistance is provided to tenants of subsidized rental units and community-based nonprofits interested in purchasing the properties in the event that conversion is a likelihood.

50852. As used in this chapter, the terms defined in this section shall have the following meanings:

(a) "Conversion" means any of the following:

(1) The prepayment of a federally, state, or locally subsidized or insured mortgage prior to the expiration of the term of the mortgage, including mortgages of assisted housing developments as defined in paragraphs (2) and (4) of subdivision (a) of Section 65863.10 of the Government Code and mortgages made pursuant to Chapter 7 (commencing with Section 52075) of Part 5, Article 2 (commencing with Section 33760) of Chapter 8 of Part 1 of Division 24, Article 5 (commencing with Section 34350) of Chapter 1 of Part 2 of Division 24, and Part 3 (commencing with Section 50900).

(2) Not renewing a contract with HUD or FmHA, which provides rent subsidies, where the contract may be unilaterally renewed by an owner, and prior to expiration of the full term of the contract, including, but not limited to, contracts entered into pursuant to the programs listed in paragraphs (1) and (3) of subdivision (a) of Section 65863.10 of the Government Code.

(3) Purchase by an owner or its related entity of a building following foreclosure of HUD or the FmHA, where the building included subsidized rental units immediately prior to foreclosure or sale, where the building no longer includes subsidized rental units, and where the building was owned by the same owner immediately prior to foreclosure or sale in lieu of foreclosure. For purposes of this section, "related entity" means a spouse, parent, child, or other individual who is blood related to the owner, a partnership if the owner is either a general or limited partner of the partnership, a corporation if the owner serves on the board of directors of the corporation or if the owner is a holder of 1 percent, or more, of the stock of the corporation, and any other business entity for which the owner has primary authority for management of the business.

(b) "Converted unit" means a subsidized rental unit that was subject to conversion.

(c) "FmHA" means the Farmers Home Administration.

(d) "HUD" means the United States Department of Housing and Urban Development.

(e) "Owner" means the person, partnership, or corporation that is a party to a contract with a federal, state, or local governmental agency which provides a mortgage, mortgage assistance, or rent subsidy.

(f) "Section 8" means any rental subsidy program established pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437), as amended.

(g) "Subsidized rental unit" means any unit with a rent that was subject to regulation by a federal, state, or local governmental

agency prior to conversion.

(h) "Tenant" means a person entitled by written or oral agreement, subtenancy approved by the owner, or sufferance, to occupy a unit to the exclusion of others.

50853. The department shall provide to tenants of subsidized rental units, community organizations, local governmental agencies, and other interested persons all of the following:

(a) To the extent that information on federally and state subsidized housing projects, eligible for conversion, is available from federal, state, or other agencies, a written inventory of information on those projects, upon demand to the public. For each project, the information shall include, but not be limited to, the project name and address, the project owner, the earliest date of eligibility for subsidy termination, the type of ownership, the number of units in the building to be affected by conversion, the federal financing program, the loan contract number, the amount and term, interest rate, endorsement date, type of Section 8 contract, Section 8 contract number, and any other information determined to be pertinent.

(b) Written information concerning the legal rights, responsibilities and options of owners and tenants when an owner intends to convert the building.

(c) Written information concerning available technical assistance, within the state, for tenants and community nonprofits interested in buying those properties from the owner.

(d) Written information relating to the conversion process of federally subsidized rental units and applicable federal, state, and local laws.

(e) Any other information or technical assistance determined by the department to further the purposes of this chapter.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1439

An act to amend Section 65589.5 of the Government Code, relating to housing.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds all of the following:

(1) The lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments which limit the approval of affordable housing, increase the cost of land for affordable housing, and require that high fees and exactions be paid by producers of potentially affordable housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions which result in disapproval of affordable housing projects, reduction in density of affordable housing projects, and excessive standards for affordable housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible affordable housing developments which contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without meeting the provisions of subdivision (c).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands to urban uses continues to have adverse effects on the availability of such lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, infilling existing urban areas.

(d) A local agency shall not disapprove a housing development project affordable to low- and moderate-income households or condition approval in a manner which renders the project infeasible

for development for the use of low- and moderate-income households unless it finds, based upon substantial evidence, one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article and the development project is not needed for the jurisdiction to meet its share of the regional housing need of low-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(6) The development project is inconsistent with the jurisdiction's general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the provisions of the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 of the Government Code or the provisions of the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code. Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with development standards and policies appropriate to and consistent

with meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nor shall anything in this section be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities, because the Legislature finds that the lack of affordable housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, social, and technological factors.

(2) "Affordable to low- and moderate-income households" means at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, and the remaining units shall be sold or rented to either lower income households or persons and families of moderate income as defined in Section 50093 of the Health and Safety Code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based. "Area median income" shall mean area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for the lower income households in accordance with the provisions of this subdivision for 30 years.

(3) "Neighborhood" means a planning area commonly identified as such in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(i) If any city, county, or city and county denies approval or imposes restrictions, including a reduction of allowable densities or the percentage of a lot which may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, which have a substantial adverse effect on the viability or

affordability of a housing development affordable to low- and moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (c).

(j) When a proposed housing development project complies with the applicable general plan, zoning, and development policies in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1440

An act to amend Sections 52080 and 52099 of, and to amend, add, and repeal Sections 33760, 33760.5, 34312.3, and 51335 of, the Health and Safety Code, relating to housing.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 33760 of the Health and Safety Code is amended to read:

33760. (a) Within its territorial jurisdiction, an agency may determine the location and character of any residential construction to be financed under this chapter and may make mortgage or construction loans to participating parties through qualified mortgage lenders, or purchase mortgage or construction loans without premium made by qualified mortgage lenders to participating parties, or make loans to qualified mortgage lenders, for financing any of the following:

(1) Residential construction within a redevelopment project area.

(2) Residential construction of residences in which the dwelling units are committed, for the period during which the loan is outstanding, for occupancy by persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of the residence.

(3) To the extent required by Section 103A of Title 26 of the United States Code, as amended, to maintain the exemption from federal income taxes of interest on bonds or notes issued by the agency under this chapter, residences located within targeted areas, as defined by Section 103(b) (12) (A) of Title 26 of the United States Code. Any loans to qualified mortgage lenders shall be made under terms and conditions which, in addition to other provisions as determined by the agency, shall require the qualified mortgage lender to use all of the net proceeds thereof, directly or indirectly, for the making of mortgage loans or construction loans in an appropriate principal amount equal to the amount of the net proceeds. Those mortgage loans may, but need not, be insured.

(b) (1) Not less than 20 percent (15 percent in target areas) of the units in any residential project financed pursuant to this section on or after January 1, 1986, shall be occupied by, or made available to, individuals of low and moderate income, as defined by Section 103(b) (12) (C) of Title 26 of the United States Code. If the sponsor elects to establish a base rent for units reserved for lower income households, the base rents shall be adjusted for household size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(2) Not less than one-half of the units described in paragraph (1) shall be occupied by, or made available to, very low income households, as defined by Section 50105. The rental payments for those units paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf

of those units) shall not exceed the amount derived by multiplying 30 percent times 50 percent of the median adjusted gross income for the area, adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(c) No agency may issue any bonds on or after January 1, 1986, until the information required to be filed pursuant to Section 8855.5 of the Government Code has been filed with the California Debt Advisory Commission and the Treasurer certifies to the Legislature that the agency has filed that information.

(d) Units required to be reserved for occupancy as provided in subdivision (b) and financed with the proceeds of bonds issued on or after January 1, 1986, shall remain occupied by, or made available to, those persons until the bonds are retired.

(e) This section shall become operative January 1, 1996.

SEC. 2. Section 33760 is added to the Health and Safety Code, to read:

33760. (a) Within its territorial jurisdiction, an agency may determine the location and character of any residential construction to be financed under this chapter and may make mortgage or construction loans to participating parties through qualified mortgage lenders, or purchase mortgage or construction loans without premium made by qualified mortgage lenders to participating parties, or make loans to qualified mortgage lenders, for financing any of the following:

(1) Residential construction within a redevelopment project area.

(2) Residential construction of residences in which the dwelling units are committed, for the period during which the loan is outstanding, for occupancy by persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of the residence.

(3) To the extent required by Section 103A of Title 26 of the United States Code, as amended, to maintain the exemption from federal income taxes of interest on bonds or notes issued by the agency under this chapter, residences located within targeted areas, as defined by Section 103(b) (12) (A) of Title 26 of the United States Code. Any loans to qualified mortgage lenders shall be made under terms and conditions which, in addition to other provisions as determined by the agency, shall require the qualified mortgage lender to use all of the net proceeds thereof, directly or indirectly, for the making of mortgage loans or construction loans in an appropriate principal amount equal to the amount of the net proceeds. Those mortgage loans may, but need not, be insured.

(b) (1) Not less than 20 percent (15 percent in target areas) of the units in any residential project financed pursuant to this section

on or after January 1, 1986, shall be occupied by, or made available to, individuals of low and moderate income, as defined by Section 103(b)(12)(C) of Title 26 of the United States Code. If the sponsor elects to establish a base rent for units reserved for lower income households, the base rents shall be adjusted for household size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(2) Not less than one-half of the units described in paragraph (1) shall be occupied by, or made available to, very low income households, as defined by Section 50105. The rental payments for those units paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed the amount derived by multiplying 30 percent times 50 percent of the median adjusted gross income for the area, adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(c) No agency may issue any bonds on or after January 1, 1986, until the information required to be filed pursuant to Section 8855.5 of the Government Code has been filed with the California Debt Advisory Commission and the Treasurer certifies to the Legislature that the agency has filed that information.

(d) Units required to be reserved for occupancy as provided in subdivision (b) and financed with the proceeds of bonds issued on or after January 1, 1986, shall remain occupied by, or made available to, those persons until the bonds are retired. Units required to be reserved for occupancy as provided in subdivision (b) and financed with the proceeds of bonds issued on or after January 1, 1991, shall remain occupied by, or made available to, those persons for the qualified project period. For purposes of this section, "qualified project period" means either 15 years after the later of the date the bonds are issued or the date when one-half of the units in the project were first occupied or until the bonds are retired, whichever time period is longer.

(e) Following the expiration or termination of the qualified project period, except in the event of foreclosure and redemption of the bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units required to be reserved for occupancy pursuant to subdivision (b) and financed with proceeds of bonds issued on or after January 1, 1991, shall remain

available to any eligible household occupying a reserved unit at the date of expiration or termination, at a rent not greater than the amount set forth by subdivision (b), until the earliest of any of the following occurs:

(1) The household's income exceeds 140 percent of the maximum eligible income specified in subdivision (b).

(2) The household voluntarily moves or is evicted for "good cause." "Good cause" for the purposes of this section, means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the occupancy agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the development, or the purposes or special programs of the development.

(3) Thirty years after the date of the commencement of the qualified project period.

(4) The sponsor pays the relocation assistance and benefits to tenants as provided in subdivision (b) of Section 7264 of the Government Code.

(f) During the three years prior to expiration of the qualified project period, the sponsor shall continue to make available to eligible households reserved units that have been vacated to the same extent that nonreserved units are made available to noneligible households.

(g) This section shall not be construed to require an agency to monitor the sponsor's compliance with the provisions of subdivision (e).

(h) The requirements of subdivisions (c) to (f), inclusive, of this section shall be contained in a regulatory agreement, recorded in the county in which the project is located, which includes the legal description of the property and which shall be indexed to the name of the owner as a grantor.

(i) Notwithstanding Section 1461 of the Civil Code, the provisions of this section shall run with the land and may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by an owner's failure to comply with the provisions of this section.

(j) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 3. Section 33760.5 of the Health and Safety Code is amended to read:

33760.5. (a) Notwithstanding the requirements of Section 33760, agencies which operate within a jurisdiction, the population of which is in excess of 600,000 persons, as determined by the Department of Finance, may additionally provide financing for residential construction of multifamily rental units outside of a redevelopment project area as set forth in and subject to the limitations of this section.

(b) Within its territorial jurisdiction, an agency may determine

the location and character of any residential construction to be financed under this chapter and may make mortgage or construction loans to participating parties through qualified mortgage lenders, or purchase mortgage or construction loans without premium made by qualified mortgage lenders to participating parties for financing residential construction of multifamily rental units.

(c) Not less than 20 percent (15 percent in target areas) of the units in each project financed pursuant to this section shall be occupied by, or made available to, individuals of low and moderate income, as defined in Section 103(b)(12)(C) of Title 26 of the United States Code. If the sponsor elects to establish a base rent for units reserved for lower income households, the base rents shall be adjusted for household size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(d) Not less than one-half of the low- and moderate-income units described in subdivision (c) shall be occupied by, or made available to, very low income households, as defined in Section 50105. The rental payments for those units paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed the amount derived by multiplying 30 percent times 50 percent of the median adjusted gross income for the area, adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937, (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(e) No agency may issue any bonds on or after January 1, 1986, until the information required to be filed pursuant to Section 8855.5 of the Government Code has been filed with the California Debt Advisory Commission and the Treasurer certifies to the Legislature that the agency has filed that information.

(f) Units required to be reserved for occupancy by subdivisions (c) and (d) and financed with the proceeds of bonds issued on or after January 1, 1986, shall remain occupied by, or made available to, those persons until the bonds are retired.

(g) This section shall become operative January 1, 1996.

SEC. 4. Section 33760.5 is added to the Health and Safety Code, to read:

33760.5. (a) Notwithstanding the requirements of Section 33760, agencies which operate within a jurisdiction, the population of which is in excess of 600,000 persons, as determined by the Department of Finance, may additionally provide financing for residential

construction of multifamily rental units outside of a redevelopment project area as set forth in and subject to the limitations of this section.

(b) Within its territorial jurisdiction, an agency may determine the location and character of any residential construction to be financed under this chapter and may make mortgage or construction loans to participating parties through qualified mortgage lenders, or purchase mortgage or construction loans without premium made by qualified mortgage lenders to participating parties for financing residential construction of multifamily rental units.

(c) Not less than 20 percent (15 percent in target areas) of the units in each project financed pursuant to this section shall be occupied by, or made available to, individuals of low and moderate income, as defined in Section 103(b)(12)(C) of Title 26 of the United States Code. If the sponsor elects to establish a base rent for units reserved for lower income households, the base rents shall be adjusted for household size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(d) Not less than one-half of the low- and moderate-income units described in subdivision (c) shall be occupied by, or made available to, very low income households, as defined in Section 50105. The rental payments for those units paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed the amount derived by multiplying 30 percent times 50 percent of the median adjusted gross income for the area, adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937, (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(e) No agency may issue any bonds on or after January 1, 1986, until the information required to be filed pursuant to Section 8855.5 of the Government Code has been filed with the California Debt Advisory Commission and the Treasurer certifies to the Legislature that the agency has filed that information.

(f) Units required to be reserved for occupancy by subdivisions (c) and (d) and financed with the proceeds of bonds issued on or after January 1, 1986, shall remain occupied by, or made available to, those persons until the bonds are retired. Units required to be reserved for occupancy by subdivisions (c) and (d) and financed with the proceeds of bonds issued on or after January 1, 1991, shall remain occupied by, or made available to, those persons for the

qualified project period. For purposes of this section, "qualified project period" means either 15 years after the later of the date the bonds are issued or the date when one-half of the units in the project were first occupied or until the bonds are retired, whichever time period is longer.

(g) Following the expiration or termination of the qualified project period, except in the event of foreclosure and redemption of the bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units required to be reserved for occupancy pursuant to subdivisions (c) and (d) and financed with proceeds of bonds issued on or after January 1, 1991, shall remain available to any eligible household occupying a reserved unit at the date of expiration or termination, at a rent not greater than the amount set forth by subdivisions (c) and (d), until any of the earliest of any of the following occurs:

(1) The household's income exceeds 140 percent of the maximum eligible income specified in subdivisions (c) and (d).

(2) The household voluntarily moves or is evicted for "good cause." "Good cause" for the purposes of this section, means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the occupancy agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the development, or the purposes or special programs of the development.

(3) Thirty years after the date of the commencement of the qualified project period.

(4) The sponsor pays the relocation assistance and benefits to tenants as provided in subdivision (b) of Section 7264 of the Government Code.

(h) During the three years prior to expiration of the qualified project period, the sponsor shall continue to make available to eligible households reserved units that have been vacated to the same extent that nonreserved units are made available to noneligible households.

(i) This section shall not be construed to require an agency to monitor the sponsor's compliance with the provisions of subdivision (g).

(j) The requirements of subdivisions (e) to (h), inclusive, of this section shall be contained in a regulatory agreement, recorded in the county in which the project is located, which includes the legal description of the property and which shall be indexed to the name of the owner as a grantor.

(k) Notwithstanding Section 1461 of the Civil Code, the provisions of this section shall run with the land and may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by an owner's failure to comply with the provisions of this section.

(*l*) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which

is enacted before January 1, 1996, deletes or extends that date.

SEC. 5. Section 34312.3 of the Health and Safety Code is amended to read:

34312.3. (a) Subject to the requirements of this section and of Article 5 (commencing with Section 34350), an authority may do any of the following:

(1) Issue revenue bonds for the purpose of financing the construction or development of multifamily rental housing and for the provision of capital improvements in connection with and determined necessary to the multifamily rental housing.

(2) Make or undertake commitments to make construction loans and mortgage loans to finance the development of multifamily rental housing.

(3) Purchase or undertake, directly or indirectly through lending institutions, commitments to purchase, construction loans, and mortgage loans originated in accordance with a financing agreement with the authority to finance the development of multifamily rental housing or make loans to lending institutions under terms and conditions which, in addition to other provisions determined by the authority, shall require the lending institutions to use the net proceeds of the loans for the making, directly or indirectly, of construction loans or mortgage loans to finance the development of multifamily rental housing.

(b) An authority may develop, rehabilitate, or finance housing projects or participate in the development, rehabilitation, or financing of housing projects; or purchase, sell, lease, own, operate, or manage housing projects so assisted, subject to all of the requirements of this section.

So long as the proceeds of any sale, lease, or other disposition of real property, net of the cost of sale, are to be used directly to assist a housing project pursuant to this section for persons of low income, and the funds in any trust fund established pursuant to subdivision (f) are used directly to assist housing units for persons of very low income, an authority may, after a public hearing, sell, lease, or otherwise dispose of the real property without complying with any provision of law concerning disposition of surplus property, including, but not limited to, Sections 34315.5 and 34315.7.

An authority may convey surplus lands it acquires from another public agency to a nonprofit or private developer for development of single-family homes where the development will provide for homeownership for persons and families of low or moderate income, as defined in Section 50093. This conveyance shall be after a public hearing. With the exception of subdivisions (b), (c), and (d) of Section 34315.7, the conveyance need not comply with any law concerning the disposition of surplus properties, including, but not limited to, Section 34315.5 or subdivision (a) of Section 34315.7. The proceeds of any sale or other disposition of surplus land, net of the cost of sale, shall be used to assist a housing project pursuant to this section for persons of low income.

(c) (1) (A) Not less than 20 percent of all units in housing projects assisted by an authority pursuant to this section shall be available for occupancy on a priority basis to persons of low income. In the case of housing projects located within a targeted area, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code, not less than 15 percent of all units in such housing projects assisted pursuant to this section shall be for occupancy on a priority basis by persons of low income.

(B) If the sponsor elects to establish a base rent for units reserved for lower income households, the base rents shall be adjusted for household size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(2) (A) Not less than one-half of the units required to be available for occupancy pursuant to paragraph (1) and financed with any bonds issued on or after January 1, 1986, shall be occupied by, or made available to, very low income households, as defined by Section 50105.

(B) The rental payments for those units paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed the amount derived by multiplying 30 percent times 50 percent of the median adjusted gross income for the area, adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(3) Any indebtedness incurred pursuant to a mortgage loan financed under the terms of this chapter shall be subject to acceleration and the balance owing declared immediately due and payable upon any sale of an owner-occupied residence to a purchaser who does not meet the required qualifications for borrowers as established by the authority.

(4) The authority shall require the owners of housing projects assisted pursuant to this section to accept as tenants, on the same basis as all other prospective tenants, in the units reserved for very low income households, any very low income households who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor. The authority shall not permit a selection criteria to be applied to Section 8 certificate holders that is any more burdensome than the criteria applied to all other prospective tenants.

(5) No resident in housing units assisted pursuant to this section shall be denied continued occupancy or ownership because, after admission, the resident's family income increases to exceed the eligibility level. However, the authority shall ensure that percentage requirements of this section shall continue to be met by providing the next available unit or units to persons of low income or by taking other actions to satisfy the percentage requirements of this section.

(6) In determining whether the percentage requirements of subdivision (c) have been achieved, the following terms and conditions shall be applied:

(A) The requirement that 20 percent or 15 percent, as the case may be, of the housing units assisted by an authority pursuant to this section shall be available on a priority basis to, or occupied by, households whose adjusted gross income does not exceed the applicable limits prescribed by subdivision (c) shall apply to the aggregate number of units assisted by an authority pursuant to this section.

(B) This section applies only to housing units first assisted after January 1, 1983, and the percentage requirements of subdivision (c) shall be complied with by January 1, 1986, and on January 1 of each even-numbered year thereafter.

(C) The percentage requirements of subdivision (c) shall be achieved within each of the following categories: (1) rental housing developments; (2) homeownership developments; and (3) rehabilitation financing. Housing units provided by rehabilitation financing shall not be counted within either of the first two categories.

(d) Units required to be reserved for occupancy by subdivision (c) and financed with the proceeds of bonds issued on or after January 1, 1986, shall remain occupied by, or made available to, those persons until the bonds are retired.

(e) No housing authority may issue any bonds on or after January 1, 1986, until the information required to be filed pursuant to Section 8855.5 of the Government Code has been filed with the California Debt Advisory Commission and the Treasurer certifies to the Legislature that the housing authority has filed that information.

(f) Multifamily rental housing financed pursuant to this section shall not be subject to the requirements of subparagraph (B) of paragraph (1) and paragraph (2) of subdivision (c), and the requirements of subdivision (d), if all of the following requirements are fulfilled:

(1) The housing authority offers each tenant a homeownership opportunity when the bonds are retired.

(2) A special trust fund or account which is funded with bond issuance proceeds or developer contributions, or both, is established no later than the time that the multifamily rental housing is first occupied. The initial funding of the account shall be no less than 5 percent of the face value of the bonds issued for the multifamily rental housing project. Upon repayment of the bonds, these funds,

and all interest accruing thereon, less any amounts necessary to pay outstanding claims, shall be used to assist housing units for persons of very low income.

(3) The requirements of subparagraph (A) of paragraph (1) and subparagraph (A) of paragraph (2) of subdivision (c) shall remain in effect for the periods required by Section 103(b)(12)(B) of Title 26 of the United States Code.

(g) It is the intent of the Legislature, and the Legislature declares, that housing authorities are the local entities with primary responsibility for providing housing for low-income and very low income households within their jurisdictions. However, recognizing that housing projects only for low-income households cannot be adequately assisted or developed with currently available funds, and that excess funds from housing projects assisted pursuant to this section can be utilized to further assist in the provision of housing for lower income households, it is the intent of the Legislature that the authorization of this section is to be used to enhance and supplement the traditional housing authority role of providing housing only for low-income households.

(h) This section shall become operative January 1, 1996.

SEC. 6. Section 34312.3 is added to the Health and Safety Code, to read:

34312.3. (a) Subject to the requirements of this section and of Article 5 (commencing with Section 34350), an authority may do any of the following:

(1) Issue revenue bonds for the purpose of financing the construction or development of multifamily rental housing and for the provision of capital improvements in connection with and determined necessary to the multifamily rental housing.

(2) Make or undertake commitments to make construction loans and mortgage loans to finance the development of multifamily rental housing.

(3) Purchase or undertake, directly or indirectly through lending institutions, commitments to purchase, construction loans, and mortgage loans originated in accordance with a financing agreement with the authority to finance the development of multifamily rental housing or make loans to lending institutions under terms and conditions which, in addition to other provisions determined by the authority, shall require the lending institutions to use the net proceeds of the loans for the making, directly or indirectly, of construction loans or mortgage loans to finance the development of multifamily rental housing.

(b) An authority may develop, rehabilitate, or finance housing projects or participate in the development, rehabilitation, or financing of housing projects; or purchase, sell, lease, own, operate, or manage housing projects so assisted, subject to all of the requirements of this section.

So long as the proceeds of any sale, lease, or other disposition of real property, net of the cost of sale, are to be used directly to assist a

housing project pursuant to this section for persons of low income, and the funds in any trust fund established pursuant to subdivision (f) are used directly to assist housing units for persons of very low income, an authority may, after a public hearing, sell, lease, or otherwise dispose of the real property without complying with any provision of law concerning disposition of surplus property, including, but not limited to, Sections 34315.5 and 34315.7.

An authority may convey surplus lands it acquires from another public agency to a nonprofit or private developer for development of single-family homes where the development will provide for homeownership for persons and families of low or moderate income, as defined in Section 50093. This conveyance shall be after a public hearing. With the exception of subdivisions (b), (c), and (d) of Section 34315.7, the conveyance need not comply with any law concerning the disposition of surplus properties, including, but not limited to, Section 34315.5 or subdivision (a) of Section 34315.7. The proceeds of any sale or other disposition of surplus land, net of the cost of sale, shall be used to assist a housing project pursuant to this section for persons of low income.

(c) (1) (A) Not less than 20 percent of all units in housing projects assisted by an authority pursuant to this section shall be available for occupancy on a priority basis to persons of low income. In the case of housing projects located within a targeted area, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code, not less than 15 percent of all units in such housing projects assisted pursuant to this section shall be for occupancy on a priority basis by persons of low income.

(B) If the sponsor elects to establish a base rent for units reserved for lower income households, the base rents shall be adjusted for household size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(2) (A) Not less than one-half of the units required to be available for occupancy pursuant to paragraph (1) and financed with any bonds issued on or after January 1, 1986, shall be occupied by, or made available to, very low income households, as defined by Section 50105.

(B) The rental payments for those units paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed the amount derived by multiplying 30 percent times 50 percent of the median adjusted gross income for the area, adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a

one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(3) Any indebtedness incurred pursuant to a mortgage loan financed under the terms of this chapter shall be subject to acceleration and the balance owing declared immediately due and payable upon any sale of an owner-occupied residence to a purchaser who does not meet the required qualifications for borrowers as established by the authority.

(4) The authority shall require the owners of housing projects assisted pursuant to this section to accept as tenants, on the same basis as all other prospective tenants, in the units reserved for very low income households, any very low income households who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor. The authority shall not permit a selection criteria to be applied to Section 8 certificate holders that is any more burdensome than the criteria applied to all other prospective tenants.

(5) No resident in housing units assisted pursuant to this section shall be denied continued occupancy or ownership because, after admission, the resident's family income increases to exceed the eligibility level. However, the authority shall ensure that percentage requirements of this section shall continue to be met by providing the next available unit or units to persons of low income or by taking other actions to satisfy the percentage requirements of this section.

(6) In determining whether the percentage requirements of subdivision (c) have been achieved, the following terms and conditions shall be applied:

(A) The requirement that 20 percent or 15 percent, as the case may be, of the housing units assisted by an authority pursuant to this section shall be available on a priority basis to, or occupied by, households whose adjusted gross income does not exceed the applicable limits prescribed by subdivision (c) shall apply to the aggregate number of units assisted by an authority pursuant to this section.

(B) This section applies only to housing units first assisted after January 1, 1983, and the percentage requirements of subdivision (c) shall be complied with by January 1, 1986, and on January 1 of each even-numbered year thereafter.

(C) The percentage requirements of subdivision (c) shall be achieved within each of the following categories: (1) rental housing developments; (2) homeownership developments; and (3) rehabilitation financing. Housing units provided by rehabilitation financing shall not be counted within either of the first two categories.

(d) Units required to be reserved for occupancy by subdivision (c) and financed with the proceeds of bonds issued on or after January 1, 1986, shall remain occupied by, or made available to, those

persons until the bonds are retired. Units required to be reserved for occupancy by subdivision (c) and financed with the proceeds of bonds issued on or after January 1, 1991, shall remain occupied by, or made available to those persons for the qualified project period. For purposes of this section, "qualified project period" means either 15 years after the later of the date the bonds are issued or the date when one-half of the units in the project were first occupied or until the bonds are retired, whichever time period is longer.

(e) Following the expiration or termination of the qualified project period, except in the event of foreclosure and redemption of the bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units required to be reserved for occupancy pursuant to subdivision (c) and financed with proceeds of bonds issued on or after January 1, 1991, shall remain available to any eligible household occupying a reserved unit at the date of expiration or termination, and at a rent not greater than the amount set forth by subdivision (c), until the earliest of any of the following occurs:

(1) The household's income exceeds 140 percent of the maximum eligible income specified in subdivision (c).

(2) The household voluntarily moves or is evicted for "good cause." "Good cause" for the purposes of this section, means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the occupancy agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the development, or the purposes or special programs of the development.

(3) Thirty years after the date of the commencement of the qualified project period.

(4) The sponsor pays the relocation assistance and benefits to tenants as provided in subdivision (b) of Section 7264 of the Government Code.

(f) During the three years prior to expiration of the qualified project period, the sponsor shall continue to make available to eligible households reserved units that have been vacated to the same extent that nonreserved units are made available to noneligible households

(g) This section shall not be construed to require a housing authority to monitor the sponsor's compliance with the provisions of subdivision (e).

(h) The requirements of subdivisions (d) to (f), inclusive, of this section shall be contained in a regulatory agreement, recorded in the county in which the project is located, which includes the legal description of the property and which shall be indexed to the name of the owner as a grantor.

(i) Notwithstanding Section 1461 of the Civil Code, the provisions of this section shall run with the land and may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by an owner's failure to comply with the

provisions of this section.

(j) No housing authority may issue any bonds on or after January 1, 1986, until the information required to be filed pursuant to Section 8855.5 of the Government Code has been filed with the California Debt Advisory Commission and the Treasurer certifies to the Legislature that the housing authority has filed that information.

(k) Multifamily rental housing financed pursuant to this section shall not be subject to the requirements of subparagraph (B) of paragraph (1) and paragraph (2) of subdivision (c), and the requirements of subdivision (d), if all of the following requirements are fulfilled:

(1) The housing authority offers each tenant a homeownership opportunity when the bonds are retired.

(2) A special trust fund or account which is funded with bond issuance proceeds or developer contributions, or both, is established no later than the time that the multifamily rental housing is first occupied. The initial funding of the account shall be no less than 5 percent of the face value of the bonds issued for the multifamily rental housing project. Upon repayment of the bonds, these funds, and all interest accruing thereon, less any amounts necessary to pay outstanding claims, shall be used to assist housing units for persons of very low income.

(3) The requirements of subparagraph (A) of paragraph (1) and subparagraph (A) of paragraph (2) of subdivision (c) shall remain in effect for the periods required by Section 103(b)(12)(B) of Title 26 of the United States Code.

(*l*) It is the intent of the Legislature, and the Legislature declares, that housing authorities are the local entities with primary responsibility for providing housing for low-income and very low income households within their jurisdictions. However, recognizing that housing projects only for low-income households cannot be adequately assisted or developed with currently available funds, and that excess funds from housing projects assisted pursuant to this section can be utilized to further assist in the provision of housing for lower income households, it is the intent of the Legislature that the authorization of this section is to be used to enhance and supplement the traditional housing authority role of providing housing only for low-income households.

(m) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 7. Section 51335 of the Health and Safety Code is amended to read:

51335. (a) (1) Not less than 20 percent of the total number of units in a multifamily rental housing development financed, or for which financing has been extended or committed, pursuant to this chapter from the proceeds of sale of each bond issuance of the agency shall be for occupancy on a priority basis by lower income households. If a multifamily rental housing development is located

within a targeted area, as defined by Section 143(j) of Title 26 of the United States Code, not less than 15 percent of the total number of units financed, or for which financing has been extended or committed pursuant to this chapter, shall be for occupancy on a priority basis by lower income households. Not less than one-half of the units required for occupancy on a priority basis by lower income households shall be for occupancy on a priority basis for very low income households.

The rental payments on the units required for occupancy by very low income households paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed 30 percent of 50 percent of area median income. If the sponsor elects to establish a base rent for all or part of the units for lower income households and very low income households, the base rents shall be adjusted for household size. In adjusting rents for household size, the agency shall assume that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(2) The local agency issuing permits for the development of the multifamily rental housing development shall consider opportunities to contribute to the economic feasibility of the units and to the provision of units for very low income households through concessions and inducements such as the following:

(A) Reductions in construction and design requirements.

(B) Reductions in setback and square footage requirements and the ratio of vehicular parking spaces that would otherwise be required.

(C) Granting density bonuses.

(D) Providing expedited processing of permits.

(E) Modifying zoning code requirements to allow mixed use zoning.

(F) Reducing or eliminating fees and charges for filing and processing applications, petitions, permits, planning services, water and sewer connections, and other fees and charges.

(G) Reducing or eliminating requirements relating to monetary exactions, dedications, reservations of land, or construction of public facilities.

(H) Other financial incentives or concessions for the multifamily rental housing development which result in identifiable cost reductions, as determined by the agency. The agency shall ensure that the local agency issuing permits for the development considers its responsibilities under this section and makes a good faith effort to enhance the feasibility of the project and to provide housing for lower income households and very low income households.

(3) The agency shall not permit a selection criteria to be applied to certificate holders under Section 8 of the United States Housing

Act of 1937 (42 U.S.C. Sec. 1437f) that is any more burdensome than the criteria applied to all other prospective tenants.

(4) It is the intent of the Legislature that the agency finance projects that assist in meeting the urgent need for providing shelter for lower income households, very low income households, and persons and families of low or moderate income. To that end, the quality of materials and the amenities provided should not be excessive so as to hinder the prospect of achieving the stated goal. The Legislature finds and declares that the design standards utilized by the agency in the past including, but not limited to, the design requirements adopted to govern the new construction program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), are substantially in excess of those required for a decent, healthy, and safe residential unit and intends, by the amendment adding this paragraph to this section by the Statutes of 1985, that the agency finance multifamily rental developments with substantially less costly design requirements than those required by the agency prior to January 1, 1986.

(5) It is the intent of the Legislature that the agency finance projects that assist in meeting the urgent need for providing shelter for families. To that end, developments with three- and four-bedroom units affordable to larger families shall have priority over competing developments.

(b) As a condition of financing pursuant to this chapter, the housing sponsor shall enter into a regulatory agreement with the agency providing that units reserved for occupancy by lower income households remain available on a priority basis for occupancy until the bonds are retired. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the housing sponsor and, notwithstanding any other provision of law, these burdens of the regulatory agreement shall run with the land. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the agency as grantee.

(c) The agency shall ensure that units occupied by lower income households are of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants.

(d) (1) The agency shall give priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees for multifamily rental housing developments which incorporate innovative and energy-efficient techniques which reduce development or operating costs and which have the lowest feasible per unit cost, as determined by the agency, based on efficiency of design, the elimination of improvements that are not required by applicable building standards, or a reduction in the

amount of local fees imposed on the development.

(2) The agency shall give equal priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees on multifamily rental housing developments which do any of the following:

(A) Utilize federal housing or development assistance.

(B) Utilize redevelopment funds or other local financial assistance, including, but not limited to, contributions of land, or for which local fees have been reduced.

(C) Are sponsored by a nonprofit housing organization.

(D) Provide a significant number of housing units, as determined by the agency, as part of a coordinated jobs and housing plan adopted by a local government.

(E) Exceed a ratio whereby 20 percent of the units are reserved for occupancy by lower income households, or whereby 10 percent of the units are reserved for occupancy by very low income households, or which provide units for lower income households or very low income households for the longest period of time beyond the minimum number of years.

(e) Notwithstanding any other provision of law, any mortgage which encumbers a multifamily rental housing development as security for an obligation to the agency shall have priority over any covenant, condition, restriction, or other limitation or agreement imposed on the housing development as a condition of qualifying it for any development, construction, or rehabilitation permit or approval or for any financial assistance. However, the agency may require subordination of a mortgage to the regulatory agreement specified in subdivision (b) to serve the purposes of this part.

(f) (1) New and existing rental housing developments may be syndicated after prior written approval of the agency. The agency shall grant that approval only after the agency determines that the terms and conditions of the syndication comply with this section.

(2) The terms and conditions of the syndication shall not reduce or limit any of the requirements of this chapter or regulations adopted or documents executed pursuant to this chapter. No requirements of the state shall be subordinated to the syndication agreement. A syndication shall not result in the provision of fewer assisted units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

(g) At the option of the agency, the amendments to this section made by Chapter 907 of the Statutes of 1983 may be made applicable to any multifamily rental housing development financed by the issuance, on or after September 3, 1982, of bonds authorized by this chapter.

(h) This section shall become operative January 1, 1996.

SEC. 8. Section 51335 is added to the Health and Safety Code, to read:

51335. (a) (1) Not less than 20 percent of the total number of units in a multifamily rental housing development financed, or for

which financing has been extended or committed, pursuant to this chapter from the proceeds of sale of each bond issuance of the agency shall be for occupancy on a priority basis by lower income households. If a multifamily rental housing development is located within a targeted area, as defined by Section 143(j) of Title 26 of the United States Code, not less than 15 percent of the total number of units financed, or for which financing has been extended or committed pursuant to this chapter, shall be for occupancy on a priority basis by lower income households. Not less than one-half of the units required for occupancy on a priority basis by lower income households shall be for occupancy on a priority basis for very low income households.

The rental payments on the units required for occupancy by very low income households paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed 30 percent of 50 percent of area median income. If the sponsor elects to establish a base rent for all or part of the units for lower income households and very low income households, the base rents shall be adjusted for household size. In adjusting rents for household size, the agency shall assume that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(2) The local agency issuing permits for the development of the multifamily rental housing development shall consider opportunities to contribute to the economic feasibility of the units and to the provision of units for very low income households through concessions and inducements such as the following:

(A) Reductions in construction and design requirements.

(B) Reductions in setback and square footage requirements and the ratio of vehicular parking spaces that would otherwise be required.

(C) Granting density bonuses.

(D) Providing expedited processing of permits.

(E) Modifying zoning code requirements to allow mixed use zoning.

(F) Reducing or eliminating fees and charges for filing and processing applications, petitions, permits, planning services, water and sewer connections, and other fees and charges.

(G) Reducing or eliminating requirements relating to monetary exactions, dedications, reservations of land, or construction of public facilities.

(H) Other financial incentives or concessions for the multifamily rental housing development which result in identifiable cost reductions, as determined by the agency. The agency shall ensure that the local agency issuing permits for the development considers its responsibilities under this section and makes a good faith effort to

enhance the feasibility of the project and to provide housing for lower income households and very low income households.

(3) The agency shall not permit a selection criteria to be applied to certificate holders under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) that is any more burdensome than the criteria applied to all other prospective tenants.

(4) It is the intent of the Legislature that the agency finance projects that assist in meeting the urgent need for providing shelter for lower income households, very low income households, and persons and families of low or moderate income. To that end, the quality of materials and the amenities provided should not be excessive so as to hinder the prospect of achieving the stated goal. The Legislature finds and declares that the design standards utilized by the agency in the past including, but not limited to, the design requirements adopted to govern the new construction program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), are substantially in excess of those required for a decent, healthy, and safe residential unit and intends, by the amendment adding this paragraph to this section by the Statutes of 1985, that the agency finance multifamily rental developments with substantially less costly design requirements than those required by the agency prior to January 1, 1986.

(5) It is the intent of the Legislature that the agency finance projects that assist in meeting the urgent need for providing shelter for families. To that end, developments with three- and four-bedroom units affordable to larger families shall have priority over competing developments.

(b) As a condition of financing pursuant to this chapter, the housing sponsor shall enter into a regulatory agreement with the agency providing that units reserved for occupancy by lower income households remain available on a priority basis for occupancy until the bonds are retired. As a condition of financing provided by bonds issued on or after January 1, 1991, the housing sponsor shall enter into a regulatory agreement with the agency providing that units reserved for occupancy by lower income households remain available on a priority basis for occupancy for the qualified project period. For the purposes of this section, "qualified project period" means either 15 years after the later of the date the bonds are issued or the date when one-half of the units in the project were first occupied or until the bonds are retired, whichever time period is longer. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the housing sponsor and, notwithstanding any other provision of law, these burdens of the regulatory agreement shall run with the land. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the

agency as grantee.

(c) The agency shall ensure that units occupied by lower income households are of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants.

(d) (1) The agency shall give priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees for multifamily rental housing developments which incorporate innovative and energy-efficient techniques which reduce development or operating costs and which have the lowest feasible per unit cost, as determined by the agency, based on efficiency of design, the elimination of improvements that are not required by applicable building standards, or a reduction in the amount of local fees imposed on the development.

(2) The agency shall give equal priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees on multifamily rental housing developments which do any of the following:

(A) Utilize federal housing or development assistance.

(B) Utilize redevelopment funds or other local financial assistance, including, but not limited to, contributions of land, or for which local fees have been reduced.

(C) Are sponsored by a nonprofit housing organization.

(D) Provide a significant number of housing units, as determined by the agency, as part of a coordinated jobs and housing plan adopted by a local government.

(E) Exceed a ratio whereby 20 percent of the units are reserved for occupancy by lower income households, or whereby 10 percent of the units are reserved for occupancy by very low income households, or which provide units for lower income households or very low income households for the longest period of time beyond the minimum number of years.

(e) Notwithstanding any other provision of law, any mortgage which encumbers a multifamily rental housing development as security for an obligation to the agency shall have priority over any covenant, condition, restriction, or other limitation or agreement imposed on the housing development as a condition of qualifying it for any development, construction, or rehabilitation permit or approval or for any financial assistance. However, the agency may require subordination of a mortgage to the regulatory agreement specified in subdivision (b) to serve the purposes of this part.

(f) (1) New and existing rental housing developments may be syndicated after prior written approval of the agency. The agency shall grant that approval only after the agency determines that the terms and conditions of the syndication comply with this section.

(2) The terms and conditions of the syndication shall not reduce or limit any of the requirements of this chapter or regulations adopted or documents executed pursuant to this chapter. No requirements of the state shall be subordinated to the syndication

agreement. A syndication shall not result in the provision of fewer assisted units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

(g) At the option of the agency, the amendments to this section made by Chapter 907 of the Statutes of 1983 may be made applicable to any multifamily rental housing development financed by the issuance, on or after September 3, 1982, of bonds authorized by this chapter.

(h) Following the expiration or termination of the qualified project period, except in the event of foreclosure and redemption of the bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units required to be reserved for occupancy pursuant to subdivision (a) and financed with proceeds of bonds issued on or after January 1, 1991, shall remain available to any eligible household occupying a reserved unit at the date of expiration or termination at a rent not greater than the amount set forth by subdivision (a), until the earliest of any of the following occur:

(1) The household's income exceeds 140 percent of the maximum eligible income specified in subdivision (a).

(2) The household voluntarily moves or is evicted for "good cause." "Good cause" for the purposes of this section, means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the occupancy agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the development, or the purposes or special programs of the development.

(3) Thirty years after the date of the commencement of the qualified project period.

(4) The sponsor pays the relocation assistance and benefits to tenants as provided in subdivision (b) of Section 7264 of the Government Code.

(i) During the three years prior to expiration of the qualified project period, the sponsor shall continue to make available to eligible households reserved units that have been vacated to the same extent that nonreserved units are made available to noneligible households.

(j) This section shall not be construed to require the agency to monitor the sponsor's compliance with the provisions of subdivision (h).

(k) The requirements of subdivisions (h) and (i) of this section shall be contained in a regulatory agreement required pursuant to subdivision (b).

(*l*) Notwithstanding Section 1461 of the Civil Code, the provisions of this section shall run with the land and may be enforced either in law or in equity by any resident, the agency, entity, or by any other person adversely affected by an owner's failure to comply with the provisions of this section.

(m) This section shall remain in effect only until January 1, 1996,

and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 9. Section 52080 of the Health and Safety Code is amended to read:

52080. (a) (1) Multifamily rental housing development financed, or for which financing has been extended or committed pursuant to this chapter from the proceeds of sale of each bond issue, shall at all times during the qualified project period meet the requirement of subparagraph (A) or (B), whichever is elected by the issuer at the time of issuance of the issue for each development:

(A) Twenty percent or more of the residential units in the development shall be occupied by individuals whose income is 50 percent or less of area median income.

(B) Forty percent or more of the residential units in the development shall be occupied by individuals whose income is 60 percent or less of area median income.

As used in this section, "qualified project period," "income," and "area median income" shall have the meanings specified in, and shall be determined in accordance with the provisions of, subsection (d) of Section 142 of the Internal Revenue Code of 1986, as amended, and United States Treasury regulations and rulings promulgated pursuant thereto.

With respect to a development for which the issuer has elected to meet the requirement of subparagraph (A), the rental payments paid by the occupants of the units meeting the requirement of subparagraph (A) (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those occupants or on behalf of those units) shall not exceed 30 percent of 50 percent of area median income. With respect to a development for which the issuer has elected to meet the requirement of subparagraph (B), the rental payments paid by the occupants of the units meeting the requirement of subparagraph (B) (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those occupants or on behalf of those units) shall not exceed 30 percent of 60 percent of median income.

(2) The governing body shall ensure that the local agency issuing permits for the development of the multifamily rental housing development shall consider opportunities to contribute to the economic feasibility of the units and to the provision of units for very low income households through concessions and inducements including, but not limited to, the following:

(A) Reductions in construction and design requirements.

(B) Reductions in setback and square footage requirements and the ratio of vehicular parking spaces that would otherwise be required.

(C) Granting density bonuses.

(D) Providing expedited processing of permits.

(E) Modifying zoning code requirements to allow mixed use

zoning.

(F) Reducing or eliminating fees and charges for filing and processing applications, petitions, permits, planning services, water and sewer connections, and other fees and charges.

(G) Reducing or eliminating requirements relating to monetary exactions, dedications, reservations of land, or construction of public facilities.

(H) Other financial incentives or concessions for the multifamily rental housing development which result in identifiable cost reductions, as determined by the governing body. The governing body shall ensure that the local agency issuing permits for the development considers its responsibilities under this section and makes a good faith effort to enhance the feasibility of the project and to provide housing for lower income households and very low income households.

(3) The governing body shall not permit a selection criteria to be applied to certificate holders under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) that is more burdensome than the criteria applied to all other prospective tenants.

(4) It is the intent of the Legislature that the governing body finance projects that assist in meeting the urgent need for providing shelter for lower income households, very low income households, and persons and families of low or moderate income. To that end, the quality of materials and the amenities provided should not be excessive so as to hinder the prospect of achieving the stated goal. The Legislature finds and declares that the design standards utilized in the past, including, but not limited to, the design requirements adopted to govern the new construction program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), are substantially in excess of those required for a decent, healthy, and safe residential unit and intends, by the amendment adding this paragraph to this section by the Statutes of 1985, that cities and counties finance multifamily rental developments with substantially less costly design requirements than those required by the governing body prior to January 1, 1986.

(5) It is the intent of the Legislature that the governing body finance projects that assist in meeting the urgent need for providing shelter for families. To that end, developments with three- and four-bedroom units affordable to larger families shall have priority over competing developments.

(b) As a condition of financing pursuant to this chapter, the housing sponsor shall enter into a regulatory agreement with the city or county providing that units reserved for occupancy by lower income households remain available on a priority basis for occupancy until the bonds are retired. As a condition of financing provided by bonds issued on or after January 1, 1991, the housing sponsor shall enter into a regulatory agreement with the city or county providing that units reserved for occupancy by lower income households remain available on a priority basis for occupancy for the qualified

project period. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the housing sponsor. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the city or county as grantee.

(c) The governing body shall ensure that units occupied by lower income households are of comparable quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants.

(d) (1) The city or county shall give priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees or other local fees for multifamily rental developments which incorporate innovative and energy-efficient techniques which reduce development or operating costs and which have the lowest feasible per unit cost, as determined by the city or county, based on efficiency of design or the elimination of improvements that are not required by applicable building standards.

(2) The city or county shall give equal priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees or other local fees on multifamily rental housing developments which do any of the following:

(A) Utilize federal housing or development assistance.

(B) Utilize redevelopment funds or other local financial assistance, including, but not limited to, contributions of land.

(C) Are sponsored by a nonprofit housing organization.

(D) Provide a significant number of housing units, as determined by the city or county, as part of a coordinated jobs and housing plan adopted by the city or county.

(E) Exceeds the ratios specified in subparagraph (A) or (B) of paragraph (1) of subdivision (a) or restricts the occupancy for these units for the longest period beyond the required minimum number of years.

(e) (1) New and existing rental housing developments may be syndicated after prior written approval of the governing body. The governing body shall grant that approval only after the city or county determines that the terms and conditions of the syndication comply with this section.

(2) The terms and conditions of the syndication shall not reduce or limit any of the requirements of this chapter or regulations adopted or documents executed pursuant to this chapter. No requirements of the city or county shall be subordinated to the syndication agreement. A syndication shall not result in the provision of fewer assisted units, or the reduction of any benefits or services, than were in existence prior to the syndication agreement.

(f) At the option of the city or county, the amendments to this

subdivision made by Chapter 907 of the Statutes of 1983 may be made applicable to any multifamily rental housing development financed by the issuance, on or after September 3, 1982, of bonds authorized by this chapter.

(g) Following the expiration or termination of the qualified project period, except in the event of foreclosure and redemption of the bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units required to be reserved for occupancy pursuant to subdivision (a) and financed with proceeds of bonds issued on or after January 1, 1991, shall remain available to any eligible household occupying a reserved unit at the date of expiration or termination, at a rent not greater than the amount set forth by subdivision (a), until the earliest of any of the following occur:

(1) The household's income exceeds 140 percent of the maximum eligible income specified in subdivision (a).

(2) The household voluntarily moves or is evicted for "good cause." "Good cause" for the purposes of this section, means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the occupancy agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the development, or the purposes or special programs of the development.

(3) Thirty years after the date of the commencement of the qualified project period.

(4) The sponsor pays the relocation assistance and benefits to tenants as provided in subdivision (b) of Section 7264 of the Government Code.

(h) During the three years period to expiration of the qualified project period, the sponsor shall continue to make available to eligible households reserved units that have been vacated to the same extent that nonreserved units are made available to noneligible households.

(i) This section shall not be construed to require a city or county to monitor the sponsor's compliance with the provisions of subdivision (g).

(j) The requirements of subdivisions (g) to (i), inclusive, of this section shall be contained in a regulatory agreement required pursuant to subdivision (b).

(k) Notwithstanding Section 1461 of the Civil Code, the provisions of this section shall run with the land and may be enforced either in law or in equity by any resident, local agency, entity, or by any other person adversely affected by an owner's failure to comply with the provisions of this section.

SEC. 10. Section 52099 of the Health and Safety Code is amended to read:

52099. This chapter shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

CHAPTER 1441

An act to amend Sections 65361, 65400, 65582, 65584, 65585, and 65587 of, to add Section 65589.3 to, the Government Code, and to amend Section 50459 of the Health and Safety Code, relating to housing.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 65361 of the Government Code is amended to read:

65361. (a) Notwithstanding any other provision of law, upon application by a city or county, the Director of Planning and Research shall grant a reasonable extension of time, not to exceed one year from the date of issuance of the extension, for the preparation and adoption of all or part of the general plan, if the legislative body of the city or county, after a public hearing, makes any of the following findings:

(1) Data required for the general plan shall be provided by another agency and it has not yet been provided.

(2) In spite of sufficient budgetary provisions and substantial recruiting efforts, the city or county has not been able to obtain necessary staff or consultant assistance.

(3) A disaster has occurred requiring reassignment of staff for an extended period or requiring a complete reevaluation and revision of the general plan, or both.

(4) Local review procedures require an extended public review process which has resulted in delaying the decision by the legislative body.

(5) The city or county is jointly preparing all or part of the general plan with one or more other jurisdictions pursuant to an existing agreement and timetable for completion.

(6) Other reasons exist that justify the granting of an extension, so that the timely preparation and adoption of a general plan is promoted.

(b) The director shall not grant an extension of time for the preparation and adoption of a housing element except in the case of a newly incorporated city or newly formed county which cannot meet the deadline set by Section 65360. Before the director grants an extension of time pursuant to this subdivision, he or she shall consult with the Director of the Department of Housing and Community Development.

(c) The application for an extension shall contain all of the following:

(1) A resolution of the legislative body of the city or county adopted after public hearing setting forth in detail the reasons why

the general plan was not previously adopted as required by law or needs to be revised, including one or more of the findings made by the legislative body pursuant to subdivison (a), and the amount of additional time necessary to complete the preparation and adoption of the general plan.

(2) A detailed budget and schedule for preparation and adoption of the general plan including plans for citizen participation and expected interim action. The budget and schedule shall be of sufficient detail to allow the director to assess the progress of the applicant at regular intervals during the term of the extension. The schedule shall provide for adoption of a complete and adequate general plan within two years of the date of the application for the extension.

(3) A set of proposed policies and procedures which would ensure, during the extension of time granted pursuant to this section, that the land use proposed in an application for a subdivision, rezoning, use permit, variance, or building permit will be consistent with the general plan proposal being considered or studied.

(d) The director may impose any conditions on extensions of time granted that the director deems necessary to ensure compliance with the purposes and intent of this title. Those conditions shall apply only to those parts of the general plan for which the extension has been granted. In establishing those conditions, the director may adopt or modify and adopt any of the policies and procedures proposed by the city or county pursuant to paragraph (3) of subdivision (c).

(e) During the extension of time specified in this section, the city or county is not subject to the requirement that a complete and adequate general plan be adopted, the requirement that it be adopted within a specific period of time, or the requirements of state law that its decisions be consistent with those portions of the general plan for which an extension has been granted. However, development approvals shall be consistent with the conditions imposed by the director pursuant to subdivision (d) and any element or elements that have been adopted and for which an extension of time is not sought.

(f) If a city or county that is granted a time extension pursuant to this section determines that it cannot complete the elements of the general plan for which the extension has been granted within the prescribed time period, the city or county may request one additional extension of time, not to exceed one year, if the city or county is able to demonstrate to the satisfaction of the director that substantial progress has been made toward the completion of the general plan. The provisions of this subdivision shall not apply to an extension of time granted pursuant to subdivision (b).

(g) An extension of time granted pursuant to this section for the preparation and adoption of all or part of a city or county general plan is exempt from the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 2. Section 65400 of the Government Code is amended to read:

65400. After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(b) Provide an annual report to the legislative body on the status of the plan and progress in its implementation, including the progress in meeting its share of regional housing needs determined pursuant to Section 65584.

SEC. 3. Section 65582 of the Government Code is amended to read:

65582. As used in this article:

(a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.

(b) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1.

(c) "Department" means the Department of Housing and Community Development.

(d) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.

(e) "Low- and moderate-income households" means persons and families of low or moderate incomes as defined by Section 50093 of the Health and Safety Code.

SEC. 4. Section 65584 of the Government Code is amended to read:

65584. (a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county. The distribution of regional housing needs shall, based upon available data take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties which already have disproportionately high proportions of lower income households. Based upon data provided by the

Department of Finance, in consultation with each council of government, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The councils of governments shall provide each city and county with the department's information.

(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). Where the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.

(c) (1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon

available data and accepted planning methodology, and supported by adequate documentation.

(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be, shall accept the proposed revision, modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.

(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(C) The date of the hearing shall be at least 30 days from the date of the notification.

(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments, recommendations, available data, accepted planning methodology, and local geological and topographic restraints on the production of housing.

(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the council of governments or the department grant a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share which was originally determined by the council of governments or the department.

(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(5) The council of governments or the department shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(A) One or more cities within the county agree to increase its share or their shares in an amount which will make up for the reduction.

(B) The transfer of shares shall only occur between a county and cities within that county.

(C) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(D) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval

of the proposed reduction, taking into consideration the criteria of subdivision (a) of Section 65584.

(6) The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.

(d) (1) Except as provided in paragraph (2), any ordinance, policy, or standard of a city or county which directly limits, by number, the building permits which may be issued for residential construction, or which limits for a set period of time the number of buildable lots which may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(2) Paragraph (1) does not apply to any city or county which imposes a moratorium on residential construction for a set period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings which specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(f) A fee may be charged interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to seven days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the provisions of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 4.5. Section 65584 of the Government Code is amended to read:

65584. (a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county. The distribution of regional housing needs shall, based upon available data, take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns and public transportation facilities, type and tenure of housing need, the loss of units contained

in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers and shall promote efficient commuting patterns and the provision of housing close to employment opportunities or public transportation facilities. The distribution shall seek to reduce the concentration of lower income households in cities or counties which already have disproportionately high proportions of lower income households. Based upon data provided by the Department of Finance, in consultation with each council of government, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall provide each locality with the net job growth projections for the locality which the council of governments considered in developing local shares of projected regional housing needs.

The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumption and methodology used in calculating its share of the statewide housing need. The councils of governments shall provide each city and county with the department's information.

(b) For areas with no council of governments, the department shall determine housing market areas and define the regional

housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). Where the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.

(c) (1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.

(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be, shall accept the proposed revision, modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.

(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(C) The date of the hearing shall be at least 30 days from the date of the notification.

(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments, recommendations, available data, accepted planning methodology, and local geological and topographic restraints on the production of housing.

(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the council of governments or the department grants a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share which was originally determined by the council of governments or the department.

(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(5) The council of governments or the department shall reduce the share of regional housing needs of a county if all of following conditions are met:

(A) One or more cities within the county agree to increase its share or their shares in an amount which will make up for the reduction.

(B) The transfer of shares shall only occur between a county and the cities within that county.

(C) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(D) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval of the proposed reduction, taking into consideration the criteria of subdivision (a) of Section 65584.

(6) The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon a request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.

(d) (1) Except as provided in paragraph (2), any ordinance, policy, or standard of a city or county which directly limits, by number, the building permits which may be issued for residential construction, or which limits for a set period of time the number of buildable lots which may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(2) Paragraph (1) does not apply to any city or county which imposes a moratorium on residential construction for a set period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings which specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Any authority to review and revise the share of a city, or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(f) A fee may be charged interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to seven days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt

from the provisions of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 5. Section 65585 of the Government Code is amended to read:

65585. (a) In the preparation of its housing element, each city and county shall consider the guidelines adopted by the department pursuant to Section 50459 of the Health and Safety Code. Those guidelines shall be advisory to each city or county in the preparation of its housing element.

(b) At least 90 days prior to adoption of its housing element, or at least 45 days prior to the adoption of an amendment to this element, the planning agency shall submit a draft element or draft amendment to the department. The department shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the draft in the case of an adoption or within 45 days of its receipt in the case of a draft amendment.

(c) In the preparation of its findings, the department may consult with any public agency, group, or person. The department shall receive and consider any written comments from any public agency, group, or person regarding the draft or adopted element or amendment under review.

(d) In its written findings, the department shall determine whether the draft element or draft amendment substantially complies with the requirements of this article.

(e) Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by the department. If the department's findings are not available within the time limits set by this section, the legislative body may act without them.

(f) If the department finds that the draft element or draft amendment does not substantially comply with the requirements of this article, the legislative body shall take one of the following actions:

(1) Change the draft element or draft amendment to substantially comply with the requirements of this article.

(2) Adopt the draft element or draft amendment without changes. The legislative body shall include in its resolution of adoption written findings which explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with the requirements of this article despite the findings of the department.

(g) Promptly following the adoption of its element or amendment, the planning agency shall submit a copy to the department.

(h) The department shall, within 120 days, review adopted housing elements or amendments and report its findings to the planning agency.

SEC. 6. Section 65587 of the Government Code is amended to

read:

65587. (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981, and the deadlines set by Section 65588. Except as specifically provided in subdivision (b) of Section 65361, the Director of Planning and Research shall not grant an extension of time from these requirements.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of this article.

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction throughout the period for compliance to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

SEC. 7. Section 65589.3 is added to the Government Code, to read:

65589.3. In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department has found that the element or amendment substantially complies with the requirements of this article.

SEC. 8. Section 50459 of the Health and Safety Code is amended to read:

50459. (a) The department may adopt, and from time to time revise, guidelines for the preparation of housing elements required by Section 65302 and Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(b) The department shall review housing elements and amendments for substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code and report its findings pursuant to Section 65585 of the Government Code.

(c) On or before December 31, 1991, and annually thereafter, the department shall report to the Legislature on the status of housing elements and the extent to which they comply with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code. The department shall also make this report available to any other public

agency, group, or person who requests a copy.

(d) The department may, in connection with any loan or grant application submitted to the agency, require submission to the department for review of any housing element and any local housing assistance plan adopted pursuant to the Housing and Community Development Act of 1974 (Public Law 93-383).

SEC. 9. Section 4.5 of this bill incorporates amendments to Section 65584 of the Government Code proposed by both this bill and SB 727. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 65584 of the Government Code, and (3) this bill is enacted after SB 727 in which case Section 4 shall not become operative.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1442

An act to amend Section 865 of the Financial Code, relating to financial institutions.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 865 of the Financial Code is amended to read:

865. As used in this article:

(a) "Account" means a demand, savings, or time deposit (including a time certificate of deposit), as defined in regulations promulgated pursuant to Sections 371b, 1828, and 3502 of Title 12 of the United States Code, respectively, which is established by one or more natural persons, or an unincorporated association of natural persons, pursuant to which the depositor may from time to time make deposits and effect withdrawals and as to which the address shown on the records of the bank is within the United States or its territories.

(b) "Depositor" means a person who is identified on the signature card for an account, or in the absence of a signature card, a person who has an interest in an account which is reflected on the records of the bank for that account to whom statements of account or other notices are normally given, or the agent of such person.

(c) "Charges" means those charges which a bank may, from time to time, impose on an account in the normal course of business in the operation of the account, and does not include:

(1) Charges which may be imposed for extraordinary services furnished at the specific request of the depositor.

(2) Charges or amounts required to be disclosed to the depositor pursuant to the Truth-in-Lending Act (15 U.S.C. Sec. 1601, et seq.) and Regulation Z (12 C.F.R. 226.1, et seq.), as amended.

(3) Charges which may be imposed in connection with the printing of checks ordered by the depositor.

(4) Charges which may be imposed on the account but which are actually asserted by another bank pursuant to the Commercial Code in the course of presentment, payment or collection of an item.

CHAPTER 1443

An act to amend Sections 8952.5 and 8957 of, to add Chapter 3.6 (commencing with Section 8630) to Part 6 of, to repeal and add Section 8958 of, and to repeal Section 8959 of, the Education Code, relating to education.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 3.6 (commencing with Section 8630) is added to Part 6 of the Education Code, to read:

CHAPTER 3.6. CALIFORNIA SUMMER SCIENCE AND TECHNOLOGY ACADEMY

8630. It is the intent of the Legislature, pursuant to this chapter, to do all of the following:

(a) Support the educational experiences of all pupils, and to assist them to excel, in the fields of mathematics, science, and technology, especially with regard to females and minority members, who have traditionally been underrepresented in those fields.

(b) Encourage and improve upon the performance of California pupils in national competitions in mathematics, science, and technology.

(c) Provide opportunities for capable pupils to participate in summer honors research programs with research faculty at the

University of California and other institutions of higher education.

8631. The California Summer Science and Technology Academy is hereby established. The academy shall be a statewide program that shall be developed and operated to identify public high school pupils with high academic potential in mathematics, science, and technology, with an emphasis on females and minority members, to participate in university-based research programs. Special consideration shall be given to recruiting pupils who are participants in the Mathematics, Engineering, and Science Achievement program described in Chapter 3.5 (commencing with Section 8600). The pupils, in cooperation with teachers from sponsoring high schools, shall work directly with university research faculty to undertake and complete research purposes that are educationally significant and scientifically manageable. The objective of the research, for the purposes of this chapter, is to enhance the instruction in mathematics, science, and technology that is otherwise provided to the participating pupils in high school, to better prepare those pupils for coursework in those subject areas at the university level, and to provide research data to enhance the participation of those pupils in statewide, national, and international competitions in those subject areas.

8632. The State Department of Education shall enter into an interagency agreement with the University of California under which the university, in consultation with the California State University, shall establish and conduct a pilot project, pursuant to Section 8631, at one or more campuses of the University of California, at one or more campuses of the California State University, and at one or more private universities that emphasize research. That agreement shall provide for the apportionment of funding to pay a stipend for each participating pupil and high school teacher, and to reimburse each participating university for administrative costs incurred under the program. The State Department of Education shall assist the University of California in the placement of pupils for this purpose and, no later than June 30, 1991, shall report to the education policy committees of the Legislature concerning all of the following:

(a) The number of pupils participating in the program established under this chapter, and the high schools from which they were selected.

(b) The nature of the research projects in which the pupils participated.

(c) The number of participating pupils that continued their education at a postsecondary educational institution.

(d) A list of the sponsoring high schools and participating universities

8633. No provision of this chapter shall apply to the University of California unless the Regents of the University of California, by resolution, make that provision applicable.

SEC. 2. Section 8952.5 of the Education Code is amended to read:

8952.5. (a) The California State Summer School for the Arts shall be governed by a 15-member board of trustees, to be known as the Trustees of the California State Summer School for the Arts. The membership of the board shall be broadly representative of the cultural, ethnic, and geographic diversity of the state, and shall be composed of artists, arts educators, university professors and administrators, arts administrators, representatives of foundations, corporations, and commercial arts industries, and other distinguished citizens of the state.

(b) The membership of the board of trustees shall be as follows:

(1) Four members appointed by the Governor.

(2) One members appointed by the Speaker of the Assembly.

(3) One members appointed by the Senate Rules Committee.

(4) Two members appointed by the State Board of Education, one of whom shall be a current member of the State Board of Education.

(5) One member appointed by the California Arts Council, who shall be a current member of the council.

(6) One member appointed by the Trustees of the California State University.

(7) One member appointed by the Regents of the University of California.

(8) Four members appointed by the governing board of the nonprofit foundation established pursuant to subdivision (f) of Section 8953.5, who shall be the president of the foundation, another officer of the foundation, a member of the governing body of the foundation, and one other person who is a member of the governing body of the foundation, has a prior relationship with the foundation, or has otherwise exhibited a continuing interest in the foundation or in the California State Summer School for the Arts.

(c) Each appointment shall be for a term of three years, and each member shall be eligible for reappointment.

(d) The board of trustees annually shall select a chairperson and vice chairperson, and annually shall hold not less than four meetings.

SEC. 3. Section 8957 of the Education Code is amended to read:

8957. (a) It is the Legislature's intent that at least 50 percent, but not more than 75 percent, of the actual costs of the California State Summer School for the Arts shall be financed by state funds beginning in the 1991–92 fiscal year. The balance of the operating costs shall be financed with fees and private support.

(b) The board of trustees shall set a tuition fee within a range that corresponds to actual program costs, up to but not exceeding one thousand dollars ($1,000) per session in 1989. The amount of this fee may be increased by the board of trustees up to a 5 percent increase each year thereafter. The board of trustees may award full or partial scholarships on the basis of need and ability. Students unable to pay all or part of the fee may petition the board of trustees for a fee reduction or waiver. The State Department of Education, in conjunction with the board of trustees, shall promulgate rules and regulations regarding fee reduction and waivers, which shall ensure

all of the following:

(1) That, to the degree scholarship funds are available, no talented applicant shall be denied admission solely because of inability to pay all or part of the fee.

(2) That any public announcement regarding the summer school program include notification that full scholarships are available, and information regarding the procedure for applying for a scholarship award.

(3) That, pursuant to Section 8953, student participation in the summer school program shall be broadly representative of the socioeconomic and ethnic diversity of the state.

(c) The Foundation for the California State Summer School for the Arts, which has been established as a nonprofit foundation to support the California State Summer School for the Arts, may raise funds from the private sector which may be used by the summer school for general program operating costs, scholarships, program augmentation, public relations, recruitment activity, or special projects. Private support may include, but not be limited to, direct grants to the summer school from private corporations or foundations, individual contributions, in-kind contributions, or fundraising benefits conducted by any entity.

SEC. 4. Section 8958 of the Education Code is repealed.

SEC. 5. Section 8958 is added to the Education Code, to read:

8958. The State Department of Education shall prepare and conduct an evaluation of the California State Summer School for the Arts (CSSSA), and, on or before January 1, 1992, shall report its findings to the appropriate policy and fiscal committees of the Legislature regarding the progress and impact of the CSSSA, which evaluation shall include all of the following:

(a) The extent to which the CSSSA has met the legislative intent and statutory requirements of Chapter 7 (commencing with Section 8950) of Part 6.

(b) An evaluation comparing annual expenditures and revenues, including in-kind donations, with annual budget projections; and evaluating the CSSSA's ability to meet its requirements for matching funds and any statutory constraints on the fundraising capability or performance of the CSSSA and its foundation.

(c) The effect of the organizational structure, and the relationship of CSSSA with the Trustees of the CSSSA, the CSSSA Foundation, and the State Department of Education, on fiscal accountability, policy formation, program operation, and fundraising capability.

(d) Recommendations for improvements in the CSSSA's ability to meet its goals and objectives, and its fiscal accountability, performance, and fundraising capability.

SEC. 6. Section 8959 of the Education Code is repealed.

CHAPTER 1444

An act to add Article 6.7 (commencing with Section 69619) to Chapter 2 of Part 42 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Article 6.7 (commencing with Section 69619) is added to Chapter 2 of Part 42 of the Education Code, to read:

Article 6.7. California School Paraprofessional Teacher Training Program

69619. The Legislature hereby finds and declares that over the next five years, as many as 50 percent of the classroom teachers in many urban school districts with large percentages of minority pupils will be eligible for retirement. The Legislature further finds and declares that in many school districts there are a number of classified employees, particularly minority group members, who are enrolled in, who have been enrolled in, or who would be interested in enrolling in, a teacher training program leading to a teaching credential if they were provided assistance in applying for admission and financial aid for that purpose.

The Legislature also finds and declares that educational paraprofessionals who serve pupils in the public schools provide valuable instructional services to public school pupils. A program to enhance instructional competencies and to prepare school paraprofessionals to become teachers would result in improved services in terms of their role in the instructional program in the classroom.

69619.1. (a) The California School Paraprofessional Teacher Training Program is hereby established for the purpose of recruiting paraprofessionals to participate in a pilot program designed to encourage them to enroll in a teacher training program and to provide instructional service as a teacher in the public schools.

(b) No later than July 1, 1992, the Commission on Teacher Credentialing, in consultation with the Chancellor of the California Community Colleges, the Chancellor of the California State University, and representatives of certificated and classified employee organizations, shall select 12 or more school districts or county offices of education, each of which applies for that selection and has 300 or more classified employees, to participate in a pilot program for the recruitment of school paraprofessional employees who wish to enroll in teacher training programs. The commission shall ensure that a total of 600 school paraprofessionals are recruited

from among the 12 participating school districts or county offices of education. The commission shall also require that at least 40 percent of the school paraprofessionals employed by each school district or county office of education selected to participate in the pilot program are members of racial and ethnic minority groups, as determined by data compiled under the California Basic Educational Data System maintained by the State Department of Education. The criteria adopted by the commission for the selection of school districts or county offices of education to participate in the pilot program shall include the following:

(1) The extent to which the applicant district or county office demonstrates the capacity and willingness to accommodate the participation of school paraprofessionals of the district in teacher training programs conducted at institutions of higher education.

(2) The extent to which the applicant district's or county office's plan for the implementation of its recruitment program involves the active participation of one or more local campuses of the California Community Colleges or the California State University in the development of coursework and teaching programs for participating school paraprofessionals. Each selected school district or county office of education shall be required to enter into a written articulation agreement with the participating campuses of the California Community Colleges and the California State University.

(c) Each selected school district or county office of education shall provide information and assistance to each school paraprofessional it recruits under the pilot program regarding admission to a teacher training program.

(d) The school district or county office of education shall recruit and organize groups, or "cohorts," of school paraprofessionals, of not less than 30 paraprofessionals in each cohort. Cohorts shall be organized to consist of school paraprofessionals having approximately equal academic experience and qualifications, as determined by the district or county office of education. The members of each cohort shall enroll in the same campus, and shall be provided by the school district or county office of education with appropriate support and information throughout the course of their studies. Each school district or county office of education shall certify that it has received a commitment from each member of a cohort that he or she will complete one school year of classroom instruction in the district county office of education for each year that he or she receives assistance for books, fees, and tuition while attending a community college or a campus of the California State University under the program. To the extent possible, members of each cohort shall proceed through the same waiver and credential programs. "Teacher training program," for the purposes of this article, means any undergraduate program of instruction conducted at a campus of the California Community Colleges, or undergraduate or graduate program conducted at a campus of the California State University, that is designed to qualify students enrolled in the program for a

teaching credential authorizing instruction in kindergarten and grades 1 to 12, inclusive.

(e) The commission shall contract with an independent evaluator with a proven record of experience in assessing career-advancement teacher training programs to determine the success of the recruitment programs established pursuant to subdivision (b). The evaluation shall be made on an annual basis and shall include, but shall not be limited to, all of the following:

(1) The number and racial and ethnic classifications of school paraprofessionals successfully recruited under this article for participation in a teacher training program.

(2) The number and racial and ethnic classifications of school paraprofessionals participating in the pilot program who successfully complete the teacher training program each year.

(3) The total cost per person participating in the pilot program who successfully obtains a teaching credential, based upon all state, local, federal, and other sources of funding.

(4) The economic status of persons participating in the pilot program.

(5) A description of financial and other resources made available to each recruitment program by participating school districts or county offices of education, the California Community Colleges, the California State University, and other participating organizations.

(f) Each selected school district or county offices of education shall report to the commission regarding the progress of each cohort of school paraprofessionals, and other information regarding its recruitment program as the commission may direct.

(g) No later than January 1, 1993, and again by January 1, 1994, and by January 1, 1995, the commission shall report to the Legislature regarding the status of the pilot program, including, but not limited to, the number of school paraprofessionals recruited, the academic progress of the school paraprofessionals recruited, the number of school paraprofessionals recruited who are subsequently employed as teachers in the public schools, and other effects upon the operation of the public schools.

(h) "Teaching paraprofessional," for the purposes of this article, includes the following job classifications: teacher associate, teacher assistant, teacher aide, pupil service aide, and library aide.

(i) "Local education agency" for the purposes of this article, includes county offices of education that can participate in the pilot programs.

69619.3. The Commission on Teacher Credentialing shall conduct a survey of classified employees in each school district or county office of education maintaining kindergarten and any of grades 1 to 12, inclusive, that has 300 or more classified employees where at least 40 percent of the paraprofessionals employed by the district or county office are members of racial and ethnic minority groups. The survey shall be addressed to those classified employees of each of those districts or county offices who express the desire to

enroll in a postsecondary education program in order to obtain a teaching credential authorizing instruction in kindergarten and grades 1 to 12, inclusive, and shall determine the educational attainment of each of those classified employees, and the approximate coursework that would be required in order for the classified employee to obtain that teaching credential. The survey shall be designed to determine the extent to which the need exists, in the 1992-93 fiscal year and thereafter, for the pilot program described in Section 69619.1. The survey shall include the views of the management employees of the local school districts or county offices of education regarding their participation in the pilot programs. The commission shall submit draft recommendations based on the results of the survey to the Legislature no later than May 1, 1991. The commission shall submit the results of the survey to the Legislature no later than July 1, 1990.

SEC. 2. The sum of eighty-five thousand dollars ($85,000) is hereby appropriated from the Teacher Credentials Fund to the Commission on Teacher Credentialing for the purpose of conducting the survey pursuant to Section 69619.3 of the Education Code.

CHAPTER 1445

An act to amend Section 12507 of the Vehicle Code, relating to education.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 12507 of the Vehicle Code is amended to read:

12507. Any person 16 years of age but less than 18, may apply for a driver's license, and the department may issue a driver's license to that person upon successful completion of an examination as required by the department and upon compliance with one of the following:

(a) Satisfactory completion of approved courses in automobile driver education and driver training maintained pursuant to provisions of the Education Code in any secondary school of California, or equivalent instruction in a secondary school of another state.

(b) Satisfactory completion of six hours or more of behind-the-wheel instruction by a driving school or an independent driving instructor licensed under Chapter 1 (commencing with Section 11100) of Division 5 and either an accredited course in automobile driver education in any secondary school of California pursuant to provisions of the Education Code or satisfactory

completion of equivalent professional instruction acceptable to the department. To be acceptable to the department, the professional instruction shall meet minimum standards to be prescribed by the department, which standards shall be at least equal to the requirements for driver education and training contained in the rules and regulations adopted by the State Board of Education pursuant to provisions of the Education Code. A person who has complied with this subdivision shall not be required by the governing board of a school district to comply with subdivision (a) in order to graduate from high school.

CHAPTER 1446

An act making an appropriation for the payment of claims against the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The sum of one million one hundred sixty-nine thousand forty-three dollars and sixty-two cents ($1,169,043.62) is hereby appropriated, in accordance with the following schedule, to the Secretary of the State Board of Control to pay claims accepted by the State Board of Control:

(a) From the Bank and Corporation Tax Fund	$ 2,255.83
(b) From the General Fund	773,291.94
(c) From the Inheritance Tax Fund	55.63
(d) From funds appropriated in Item 1230-020-735(a) of the Budget Act of 1988	8,630.00
(e) From funds appropriated in Section 2.00 of the Budget Act of 1990, as follows:	275,178.53
(1) From Item 0250-001-001(c)	802.50
(2) From Item 0820-001-001(g)	304.00
(3) From Item 0860-001-001(a)	153.05
(4) From Item 0860-001-001(b)	200.00
(6) From Item 1370-044-757	2,393.97
(7) From Item 1730-001-001(b)	304.96
(8) From Item 2100-001-001(b)	35.40
(9) From Item 2240-001-001(a)	386.26
(11) From Item 2660-001-042(b)	27,885.65
(12) From Item 2720-001-044(a)	24.00
(13) From Item 2740-001-001(a)	136.12
(14) From Item 2740-001-044(a)	1,716.02
(15) From Item 3340-001-001(a)	1,321.14

(16) From Item 3540-001-001(b)	1,115.95
(17) From Item 3600-001-200(a)	9,296.50
(18) From Item 3600-001-200(b)	5,477.80
(19) From Item 3790-001-001(a)	224.17
(20) From Item 3860-001-001(b)	9,067.08
(21) From Item 3860-001-001(c)	375.85
(22) From Item 4140-001-001(b)	84.11
(23) From Item 4260-001-001(a)	2,001.86
(24) From Item 4260-001-001(b)	65.47
(24.5) From Item 4260-101-001(b)	1,049.78
(25) From Item 4300-001-001(a)	150.00
(26) From Item 4300-003-001(a)	1,079.45
(27) From Item 4300-101-001(b)	2,259.41
(28) From Item 4440-001-001(b)	88.53
(29) From Item 4440-011-001(a)	50,144.00
(30) From Item 4440-011-001(b)	39.00
(31) From Item 4440-011-001(c)	240.00
(32) From Item 5100-001-870(a)	413.60
(33) From Item 5100-001-870(b)	3,716.73
(34) From Item 5160-001-001(a)	437.62
(35) From Item 5240-001-001(a)	24,387.11
(36) From Item 5450-001-001	18.90
(37) From Item 5460-001-001(b)	10,187.75
(38) From Item 5460-001-001(c)	5,163.43
(39) From Item 6110-001-001(a)	4,474.02
(40) From Item 6110-006-001(a)	460.00
(41) From Item 6610-001-001(a)	846.00
(42) From Item 6610-001-001(c)	18,336.13
(42.5) From Item 6610-301-660	23,072.00
(43) From Item 8260-101-001(b)	11,915.00
(44) From Item 8350-001-001(e)	480.10
(44.5) From Item 8700-001-001(c)	279.42
(45) From Item 8915-001-890(a)	49.00
(46) From Item 8940-001-001(c)	1,835.65
(47) From Item 9100-101-001(d)	50,684.04
(f) From funds appropriated in Item 5420-501-678 of Chapter 1549 of the Statutes of 1982	746.92
(g) From the Motor Vehicle Fuel Account	10,398.86
(h) From the Personal Income Tax Fund	308.00
(i) From the Retail Sales Tax Fund	41,097.15
(j) From the State Compensation Insurance Fund	1,465.60
(k) From the Tax Relief and Refund Account	45,086.24
(*l*) From the Teachers' Retirement Fund	653.23
(m) From the Unemployment Compensation Disability Fund	448.00
(n) From the Unemployment Fund	688.99
(o) From the Restitution Fund	8,738.70

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to pay claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 1447

An act to amend Sections 69948, 72608, 72609, 72645, 72646, 72701, 72702.5, 72703, 72704, 72704.5, 72705, 72708.5, 72712, 72717.5, 72772, 72773, 72781, 72783, 74703, 74705, and 74708 of, and to add Sections 72762, 72769, 72770, 72775, 72776, and 72777 to, the Government Code, relating to courts.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 69948 of the Government Code is amended to read:

69948. (a) The fee for reporting testimony and proceedings in contested cases is fifty-five dollars ($55) a day, or any fractional part thereof.

(b) In San Joaquin County, the compensation for superior court reporters shall be that prescribed by Section 69993.

(c) In Madera County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(d) In Kings County, the fee for reporting testimony and proceedings in contested cases is one hundred forty dollars ($140) a day, or any fractional part thereof.

(e) In Mariposa County, the board of supervisors may, by ordinance or resolution, prescribe the rate of compensation for superior court reporters.

(f) In Siskiyou County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(g) In Yuba County, the board of supervisors may, by ordinance or resolution, prescribe a higher rate of compensation for superior court reporters.

(h) In Butte County, pro tempore reporters shall receive a fee of seventy-five dollars ($75) a day, or any fractional part thereof, for reporting testimony and proceedings in contested cases.

(i) In Sutter County, except as may otherwise be provided in Sections 70045.11 and 74839, the fee for reporting testimony and

proceedings in contested cases is one hundred ten dollars ($110) per day, or any fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(j) In Napa County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(k) In Tehama County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(*l*) In Monterey County, the fee for reporting testimony and proceedings in contested cases in any court is seventy-five dollars ($75) a day or any fractional part thereof.

(m) In Nevada County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(n) In Calaveras County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(o) In Placer County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(p) In Sierra County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(q) In Trinity County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(r) In Humboldt County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(s) In Del Norte County, the fee for reporting testimony and proceedings in contested cases is seventy-five dollars ($75) per day, or any fractional part thereof.

(t) In Alpine County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(u) In Glenn County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(v) In Colusa County, the fee for reporting testimony and proceedings in contested cases is one hundred twenty-five dollars ($125) per day, or any fractional part thereof.

(w) In Shasta County, the board of supervisors may prescribe a higher rate of compensation for superior court reporters.

(x) In Solano County, the fee for reporting testimony and proceedings in contested cases is ninety dollars ($90) per day, or fifty-five dollars ($55) per half day or fractional part thereof. However, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(y) In Inyo County, the board of supervisors may, by ordinance, prescribe a higher rate of compensation for superior court reporters.

(z) In Mono County, the board of supervisors may, by ordinance,

prescribe a higher rate of compensation for superior court reporters.

SEC. 1.5. Section 72608 of the Government Code is amended to read:

72608. Certain classes of positions prescribed in Article 2 (commencing with Section 72640), Article 3 (commencing with Section 72700), and Article 4 (commencing with Section 72750) of this chapter are deemed to be related in job and compensation to position classifications included in the Los Angeles County Code, and in the case of certain classes of positions, to the administrative series included in Section 69894.1. In order to maintain the relationship of compensation and employee rights and benefits between such officers and attachés of municipal courts and county or superior court employees having commensurate duties and responsibilities and to provide appropriate salary adjustments and employee rights and benefits for related classes of court positions, the provisions of this section shall govern salary adjustments and employee rights and benefits for officers and attachés of municipal courts in Los Angeles County.

On the effective date of any amendment to such code adjusting the salary of a county employee classification listed in the table of positions set forth in this section, or on the effective date of a resolution or ordinance by the board of supervisors approving interim salary adjustments for superior court classes pursuant to Section 69894.2, the salary of the equivalent municipal court position listed opposite thereto and each other class of court position indented immediately thereunder shall be adjusted an equivalent number of schedules in the salary schedule to which such position is attached. In no event shall any one such adjustment exceed eight schedule numbers. If the level of compensation established by any such salary adjustment is not reflected in the salary schedule number provided for any court classification, the adjustment shall apply to each position in such classification on the effective date of the act fixing such salary schedule number. Classes of positions in the Performance-Based Pay Plan shall be compensated and adjusted in accordance with provisions approved by the board of supervisors.

Likewise, the salary of any court classification being enumerated in Article 2 (commencing with Section 72640), Article 3 (commencing with Section 72700), or Article 4 (commencing with Section 72750) of this chapter for the first time as an amendment to this chapter shall be adjusted as necessary on the effective date of such amendment to provide the same relationship to the county classification to which it is attached as that established when the court classification was approved in accordance with the provisions of Section 72607.

Table of Positions

Municipal Court Class	County or Superior Court Class
Officer Series	
Marshal	Performance-Based Pay Plan
Assistant Marshal	
Commander, Marshal	Commander
Captain, Marshal	Captain
Lieutenant, Marshal	Lieutenant
Sergeant, Marshal	Sergeant
Deputy Marshal IV	Deputy Sheriff IV
Deputy Marshal	Deputy Sheriff
Deputy Marshal Trainee	Deputy Sheriff Trainee
Deputy Marshal, Matron Deputy Clerk, Custody Officer	Custody Assistant
Legal Services Specialist, Marshal	Safety Police Officer II
Municipal Courts Planning and Research	
Chief Staff Attorney, p & r Assistant Chief Staff Attorney Staff Attorney II, p & r Staff Attorney I, p & r Legal Research Assistant	Senior Deputy County Counsel
Planning Analyst, p & r Planning Analyst Aide, p & r Head, Management Services, p & r Senior Planning Analyst, p & r	Program Specialist I, CAO
Courtroom Series	
All positions subject to civil service provisions enumerated in Articles 2, 3, and 4 which are not listed in this table.	Superior Court Clerk
Municipal Court Clerk Trainee	Administrative Aide
Management Series	
Court Administrator, LAMC Assistant Court Administrator, LAMC Deputy Court Administrator, Admin. and Financial Service, LAMC	Performance-Based Pay Plan

Deputy Court Administrator, Operations, LAMC	
Division Chief, Operations, LAMC	
Senior Court Manager, M.C., NCS	
Personnel Administrator, M.C.	
Training Officer, M.C.	
Chief, Budget & Facility, Division, M.C.	
Chief, Accounting & Auditing Division, M.C.	
Chief, Systems Division, M.C.	
Senior Program & Systern Analyst	
Managing Court Reporter, NCS, LAMC	
Capital Projects Manager, M.C.	
Assistant Capital Projects Manager, NCS, M.C.	
Court Information Officer, M.C.	
Chief, Systems Division, NCS, LAMC	
Assistant Chief, Systems Division, M.C.	
Senior Court Manager, NCS, LAMC	
Assistant Division Chief Operations	
Court Administrator (except Los Angeles Judicial District)	Structure adjustment to the nearest one quarter of one percent approved by the board of supervisors for application to the ranges established for classes assigned to the Performance-Based Pay Plan.
Assistant Chief Deputy	Administrative Analyst
Assistant Court Administrator (1 judge court)	Court Administrator (1 judge court)
Assistant Court Administrator (2 judge court)	Court Administrator (2 judge court)
Assistant Court Administrator (3,4,5 judge court)	Court Administrator (3,4,5 judge court)
Assistant Court Administrator (6 judge court)	Court Administrator (6 judge court)
Assistant Court Administrator (7 judge court)	Court Administrator (7 judge court)

Assistant Court Administrator (8 judge court)	Court Administrator (8 judge court)
Assistant Court Administrator (9 judge court)	Court Administrator (9 judge court)
Assistant Court Administrator (10,11,12 judge court)	Court Administrator (10,11,12 judge court)
Judicial Management Intern, M.C., NCS	Administrative Aide
Principal Clerk, Los Angeles	Supervising Superior Court Clerk

Personnel-Administrative Services-Accounting Series

Head, Fiscal & Administrative Services, Marshal	Performance-Based Pay Plan
Head Personnel Technician, LAMC	Head Departmental Personnel Technician
Head Personnel Technician, Marshal	Head Departmental Personnel Technician
Personnel Technician, M.C.	Senior Departmental Personnel Technician
Personnel Technician, Marshal	Senior Departmental Personnel Technician
Personnel Assistant, M.C.	Departmental Personnel Assistant
Safety Officer, Marshal	Safety Officer
Senior Personnel Assistant, M.C.	Senior Departmental Personnel Assistant
Senior Personnel Technician	Head, Departmental Personnel Technician
Senior Staff Assistant, Marshal Staff Assistant, Marshal Principal Clerk, Marshal Assistant Head, Fiscal & Administrative Services, Marshal Executive Assistant, Presiding Judges Association	Program Specialist I, CAO
Principal Administrative Assistant, M.C.	Administrative Assistant III
Principal Personnel Assistant, M.C.	Principal Departmental Personnel Technician
Supervising Accountant, M.C., NCS	Senior Accountant Auditor
Senior Administrative Assistant, M.C.	Administrative Assistant II
Administrative Assistant, M.C.	Administrative Assistant I

Staff Assistant, M.C.	Staff Assistant I
Statistical Analyst	Statistical Analyst
Accountant, M.C.	Accountant II
Accounting Technician, M.C.	Accounting Technician I
Intermediate Accountant, M.C.	Intermediate Accountant Auditor
Senior Accountant, M.C.	
Facilities Services Assistant, M.C.	Facilities Services Assistant
Facilities Planning Assistant, M.C.	Facilities Planning Assistant
Staff Development Specialist, M.C.	Staff Development Specialist, D.A.
Account Clerk, M.C.	Account Clerk II
Personnel Clerk, M.C.	Senior Typist-Clerk

Secretarial and Stenographic Series

Secretary to Presiding Judge, Los Angeles Municipal Court	Executive Secretary II
Executive Secretary, Los Angeles Municipal Court	
Senior Management Secretary	
Management Secretary, Los Angeles Municipal Court	
Executive Secretary, Marshal	
Senior Secretary II, Los Angeles Municipal Court	Senior Secretary II
Management Secretary, Marshal	
Senior Judicial Secretary, Municipal Court	
Senior Secretary III, Municipal Court	
Senior Secretary I, Los Angeles Municipal Court	
Secretary, Marshal	
Secretary, Los Angeles Municipal Court	
Senior Secretary, Marshal	
Senior Stenographer, M.C.	Legal Office Support Assistant II
Stenographer, M.C.	

Clerical Series

Deputy Municipal Court Clerk I	Intermediate Typist-Clerk
Deputy Clerk II, Marshal	
Deputy Clerk I, Marshal	
Deputy Municipal Court Clerk II	
Deputy Clerk III, M.C.	
Deputy Clerk III, Marshal	
Administrative Clerk, Marshal	
Clerical Aide	
Supervising Payroll Clerk, Marshal	Supervising Payroll Clerk I
Payroll Supervisor, M.C.	
Payroll Assistant, M.C.	Payroll Clerk I
Marshal's Dispatcher	Communication Operator II, Sheriff
Senior Payroll Assistant, M.C.	Payroll Clerk II
Supervising Deputy Clerk I	Supervising Typist Clerk
Deputy Clerk Supervisor, NCS, LAMC	

Supply, Duplicating, and Miscellaneous Series

Supply and Reproduction Supervisor, Marshal	Warehouse Worker II
Supply and Reproduction Assistant, Marshal	
Stockroom Supervisor, Municipal Court	
Supply Clerk, M.C.	Warehouse Worker Aide
Procurement Assistant II, M.C.	Procurement Assistant II
Procurement Aide, M.C.	Procurement Aide
Light Vehicle Driver, M.C.	Light Vehicle Driver
General Maintenance Supervisor, M.C.	General Maintenance Supervisor
General Maintenance Worker M.C.	General Maintenance Worker
Warehouse Worker II, M.C.	Warehouse Worker II
Warehouse Manager, M.C.	Warehouse Manager
Graphic Artist, M.C.	Graphic Artist

Management Information and Data-Processing Series

Data Systems Coordinator, M.C.	Data Systems Coordinator
Data Systems Analyst I, M.C.	Data Systems Analyst I
Data Systems Analyst II, M.C.	Data Systems Analyst II
Data Conversion Supervisor I, M.C.	Data Conversion Supervisor I
Data Conversion Supervisor III, M.C.	
EDP Staff Aide, M.C.	Systems Aide
Supervising Computer Operator, M.C.	Supervising Computer Operator
Computer Operations Supervisor, M.C.	
Computer Equipment Operator, M.C.	Computer Equipment Operator
Computer System Operator, M.C.	Computer Systems Operator
Senior Data Control Clerk, M.C.	Senior Data Control Clerk
Data Control Clerk, M.C.	Data Control Clerk
Senior Data Conversion Equipment Operator	Senior Data Conversion Equipment Operator
Data Conversion Equipment Operator	Data Conversion Equipment Operator
Principal Programming Analyst	EDP Principal Programming Analyst
Senior Programmer Analyst, M.C.	EDP Programmer Analyst II
Systems Programmer, M.C.	EDP Systems Programmer
Telecommunications Technician	Computer Systems Operator
Senior Telecommunications Systems Engineer, M.C., NCS	Senior Telecommunications Systems Engineer

All classes of positions approved by a majority of the judges of the municipal court and the board of supervisors for inclusion in the Los Angeles County Performance-Based Pay Plan will be compensated in accordance with the provisions of this plan as set forth in Part 3, Chapter 6.08, of the Los Angeles County Code. All of these provisions are applicable to participants in the Marshal's Department, except that for the marshal, the appointing authority is the muncipal court judges of Los Angeles County, and for all other participants in the marshal's department, the authority is the marshal. For purposes of

PBP administration only, the appointing authority for the court administrator, Los Angeles Judicial District, is the court's executive committee. The court administrator, is the appointing authority for all other participants in the Los Angeles Judicial District.

The presiding judge, the immediate past presiding judge (if still a member of the Los Angeles Municipal Court) and the assistant presiding judge will confer with the court administrator to establish new performance goals and evaluate the completion of previously established goals; these judges will then rate the court administrator's performance using the PBP rating categories established in the county code. The presiding judge shall present this rating to the executive committee for ratification at its July meeting. In the event that the executive committee does not act upon the rating, the presiding judge shall forward the rating to the CAO for inclusion in the Los Angeles Municipal Court's Merit Salary Increase Guideline. In the event a rating is not completed, the court administrator's salary will be adjusted in accordance with the Los Angeles Municipal Court Merit Increase Guideline based on a "fully meets expectations" rating.

Any existing special pay provision applicable to court classes included in PBP and which is expressed in terms of additional schedules of compensation will be converted to a percentage basis in accordance with the county's plan which equates each schedule with 2.75 percent.

Salary adjustments made pursuant to this section shall be on an interim basis and shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

Officers and attachés of municipal courts in Los Angeles County shall be entitled to all employee rights, programs and benefits, including, but not limited to, paid medical plans, management incentive, pay for performance, deferred compensation plans, flexible benefit plans, and early separation programs, parking and cafeteria privileges, longevity pay, shooting allowance, uniform and equipment allowance, and the same rights to meet with those entities which prescribe their compensation, that are provided for or made applicable to the equivalent Los Angeles County and county clerk/superior court employee classification. Participation in management incentive early separation programs and pay for performance shall be established by joint action and approval of a majority of the board of supervisors and a majority of the judges of the court, except in the Los Angeles Judicial District where such joint action shall be approved by a majority of the board of supervisors and a majority of the court's executive committee.

Bonus Level I assignments of deputy marshals are as follows:

Nineteen positions—assistant commander, small division

Twelve positions—court supervisor

Nine positions—field supervisor

Nine positions—office supervisor

Three positions communications and fleet management supervisor
One position—training officer
One position—real estate levy/bookkeeping section supervisor

Bonus Level II assignments of deputy marshals are as follows:
One position security liaison and investigations

Deputy marshals with Bonus Level I assignments shall receive additional compensation in the same amounts, for the same periods, and paid on the same terms, as deputy sheriffs assigned to Bonus Level I positions. Deputy marshals with Bonus Level II assignments shall receive additional compensation in the same amounts, for the same periods, and paid on the same terms, as deputy sheriffs assigned to Bonus Level II positions.

In addition to the salary adjustment otherwise provided by this section, persons employed in the classifications of executive secretary, M.C., senior management secretary, M.C., and secretary to the presiding judge shall receive a one-time only two-schedule salary increase effective January 1, 1989. The resulting salary rate shall constitute the base rates for subsequent salary adjustments.

In addition to the salary provided by the applicable performance-based pay provisions, a 16.5 percent bonus shall be paid to no more than one position of deputy court administrator in the Los Angeles Municipal Court who is admitted to practice law before all courts in California and required to render legal opinions and provide legal advice to the court administrator and judges.

Any deputy clerk grade I, II, III, or IV who, in addition to a regular courtroom assignment, is required to operate and monitor electronic recording equipment to produce the official record of the court proceedings shall receive a two-schedule increase in compensation while so engaged. Effective January 3, 1989, any Deputy Clerk IV assigned to a courtroom, who in addition to his or her regular duties, is required to operate and monitor electronic recording equipment to produce a record of court proceedings shall receive an increase of eight standard salary levels while so engaged. However, in no event shall a person who is receiving additional compensation for performing duties involving greater skill and responsibility as described in subdivision (b) of Section 72705 and subdivisions (j), (k), and (*l*) of Section 72755 be eligible to receive additional compensation pursuant to this subdivision, except for a deputy clerk grade III assigned to the regular duties of a deputy clerk grade IV as provided in subdivision (i) of Section 72755.

SEC. 2. Section 72609 of the Government Code is amended to read:

72609. Except where otherwise provided by law, officers and attachés of municipal courts in Los Angeles County shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Range/ Schedule
Account Clerk	49F
Accountant	62K
Accounting Technician, Municipal Court	52C
Administrative Assistant, Municipal Court	56A N2
Administrative Clerk, Marshal	54J
Assistant Capital Projects Manager, NCS, M.C.	R8 N23
Assistant Chief Deputy Clerk, Municipal Court	73H
Assistant Chief Staff Attorney, Planning and Research	92L NW
Assistant Chief, Systems Division, M.C.	R10 N23
Assistant Court Administrator LAMC	R14 N23
Assistant Court Administrator (1 judge court)	77A
Assistant Court Administrator (2 judge court)	78A
Assistant Court Administrator (3,4,5 judge court)	79A
Assistant Court Administrator (6 judge court)	80A
Assistant Court Administrator (7 judge court)	81A
Assistant Court Administrator (8 judge court)	82A
Assistant Court Administrator (9 judge court)	83A
Assistant Court Administrator (10,11,12 judge court)	84A
Assistant Division Chief, Operations LAMC	R7 N23
Assistant Head, Fiscal & Administrative Services, Marshal	79L
Assistant Marshal	R17 N23
Capital Projects Manager, M.C.	N23 R10
Captain, Marshal	92H
Chief, Accounting and Auditing Division, M.C.	R9 N23
Chief, Budget and Facilities Division, Municipal Court	R9 N23
Chief Deputy Clerk	72H
Chief, Management Information Systems, M.C.	R9 N23
Chief Staff Attorney, Planning and Research	97B NX
Chief, Systems Division, NCS, LAMC	R12 N23
Chief, Systems Division, Municipal Court	R10 N23
Clerical Aide, Municipal Court	31K
Commander, Marshal	97B
Computer Equipment Operator	50D
Computer Operations Supervisor	72G
Computer Systems Operator	55L
Court Administrator (1 judge court)	85A
Court Administrator (2 judge court)	86A
Court Administrator (3,4,5 judge court)	87A
Court Administrator (6 judge court)	88A
Court Administrator (7 judge court)	89A
Court Administrator (8 judge court)	90A

Court Administrator (9 judge court)	91A
Court Administrator (10,11,12 judge court)	92A
Court Administrator, Los Angeles Municipal Court	R16 N23
Court Information Officer, M.C.	R7 N23
Data Control Clerk	46A
Data Conversion Equipment Operator I	48F
Data Conversion Supervisor I	55H
Data Conversion Supervisor III	65C
Data Systems Analyst I	70B
Data Systems Analyst II	72J
Data Systems Coordinator	79C
Deputy Clerk I, Marshal	39H N4
Deputy Clerk II, Marshal	44L
Deputy Clerk III, Marshal	50K
Deputy Clerk III, Municipal Court	52K
Deputy Clerk IV, Municipal Court	65B NX
Deputy Clerk-Custody Officer, Marshal	51J
Deputy Clerk Supervisor, NCS, LAMC	59C
Deputy Court Administrator, Administrative & Financial Services LAMC	R12 N23
Deputy Court Administrator, Operations, LAMC	R12 N23
Deputy Marshal	NW 68B
Deputy Marshal IV	72B
Deputy Marshal Matron	NW 56L
Deputy Marshal Trainee	68B
Deputy Municipal Court Clerk I	46L N3
Deputy Municipal Court Clerk II	50C
Division Chief, Operations, LAMC	R10 N23
EDP Staff Aide	55A
Executive Assistant to Presiding Judges Association	71K
Executive Secretary, Municipal Court	74F N3
Executive Secretary, Marshal	N3 70G
Facilities Planning Assistant	61J
Facilities Services Assistant	55J
General Maintenance Supervisor, M.C.	64C
General Maintenance Worker, M.C.	54L
Graphic Artist, M.C.	61B
Head, Fiscal and Administrative Services, Marshal	R10 N23
Head, Management Services, Planning and Research	77E
Head, Personnel Technician, LAMC	76H
Head, Personnel Technician, Marshal	76H
Intermediate Accountant	72B
Interpreter	54D
Judicial Management Intern, M.C., NCS	65E
Law Clerk	70C
Legal Research Assistant, Planning and Research	FH

Legal Services Specialist, Marshal	53D
Lieutenant, Marshal	85A
Light Vehicle Driver	44B
Management Secretary	64F N3
Management Secretary, Marshal	N3 67G
Managing Court Reporter, NCS, LAMC	N23 R9
Marshal	R18 N23
Marshal's Dispatcher	52H
Municipal Court Clerk Trainee	FM
Payroll Assistant, Municipal Court	52F
Payroll Supervisor, Municipal Court	58F
Personnel Administrator, Municipal Court	R10 N23
Personnel Assistant	53D
Personnel Clerk, M.C.	51E
Personnel Technician, Marshal	72H
Planning Analyst Aide, Planning and Research	58B N2
Planning Analyst, Planning and Research	68H
Principal Administrative Assistant	69E
Principal Clerk, Los Angeles	70K
Principal Clerk, Marshal	58L
Principal Personnel Assistant, M.C.	68H
Principal Programming Analyst	83A
Procurement Aide, Municipal Court	52A
Procurement Assistant II, M.C.	59L
Safety Officer, Marshal	69B
Secretary, Marshal	58F
Secretary, Municipal Court	56F
Secretary to Presiding Judge, L.A. Municipal Court	76F N3
Senior Accountant	74K
Senior Administrative Assistant	65E
Senior Court Manager, NCS, LAMC	R7 N23
Senior Data Control Clerk, Municipal Court	49K
Senior Data Conversion Equipment Operator	52F
Senior Judicial Secretary, Municipal Court	63F N3
Senior Management Secretary, Los Angeles, M.C.	70F N3
Senior Payroll Assistant, Municipal Court	55F
Senior Personnel Assistant, M.C.	61K
Senior Personnel Technician, M.C.	76H
Senior Planning Analyst, Planning and Research	71K
Senior Program and System Analyst	R6 N23
Senior Programmer Analyst, M.C.	77J
Senior Secretary I, Municipal Court	58F
Senior Secretary II, Municipal Court	60F
Senior Secretary III, Municipal Court	63F N3
Senior Secretary, Marshal	62F
Senior Staff Assistant, Marshal	71H
Senior Stenographer	58F NZ

Senior Telecommunications Systems, Engineer, M.C., NCS	83E N4
Sergeant, Marshal	78H
Staff Assistant, Marshal	61K
Staff Assistant, Municipal Court	56L
Staff Attorney I, Planning and Research	72G N3
Staff Attorney II, Planning and Research	83L NW
Staff Development Specialist, Municipal Court	69G
Statistical Analyst	59D
Stenographer	56F N3-Z
Stockroom Supervisor	56A
Supervising Accountant, M.C., NCS	78K
Supervising Branch Clerk	69L
Supervising Computer Operator, Municipal Court	62G
Supervising Deputy Clerk I	57C
Supervising Deputy Clerk II	67B
Supervising Law Clerk	72C
Supervising Payroll Clerk, Marshal	55F
Supply and Reproduction Assistant, Marshal	49F
Supply Clerk, Municipal Court	50A
Supply and Reproduction Supervisor, Marshal	55F
Systems Programmer, M.C.	75J
Telecommunications Technician, M.C.	63L
Training Officer, Los Angeles Municipal Court	R7 N23
Warehouse Manager, M.C.	63H
Warehouse Worker II, M.C.	56A

The term "schedule" used herein refers to the salary schedule of the Los Angeles County Code. The term "range" used herein refers to the Performance-Based Pay Plan of Los Angeles County.

SEC. 3. Section 72645 of the Government Code is amended to read:

72645. The marshal shall appoint all of the following:

(a) One assistant marshal. The marshal shall make the appointment from the peace officer members of the marshal's office of the rank of lieutenant or higher and the appointee shall serve solely at the pleasure of the marshal. Section 72649 does not apply to the appointment to, nor removal of a person from, this position, but all other provisions of Section 72649 apply. Upon removal by the marshal for any reason other than that which would be cause for the discharge of any other member, an appointee shall revert to the rank held by the appointee prior to his or her appointment to the position of assistant marshal.

(b) Three commanders. Upon the occurrence of a vacancy, any succeeding appointment to this position may be made by the marshal at his or her sole discretion. At that time and thereafter, Section 72649 shall not be applicable to the appointment to, nor removal of, a person from, this position, but all other provisions of Section 72649

shall be applicable. The marshal shall make this appointment from the peace officer members of his or her office of the rank of lieutenant or higher, and the appointee shall serve solely at the pleasure of the marshal. Upon removal by the marshal for any reason other than that which would be cause for the discharge of any other member, an appointee shall revert to the rank held prior to appointment as commander.

(c) Nine captains.

(d) Twenty-eight lieutenants.

(e) Forty sergeants.

(f) Six hundred ten deputy marshals; except that the number of deputy marshals shall be reduced by the number of deputy marshal IV positions required to be retained pursuant to Section 72645.5.

(g) Twenty-seven deputy marshal trainees. Appointments to the positions shall be made from civil service lists resulting from open competitive examinations, provided that notwithstanding Section 72649, the appointees shall be subject to a 12-month period of probation.

(h) Four deputy marshal-matrons, each of whom shall have completed a course of training which meets the requirements of the POST commission for a specialized law enforcement basic certificate.

(i) Two deputy clerk-custody officers.

(j) Ten legal services specialists, marshal, each of whom shall receive monthly compensation at the same rate specified for the county's class of security officer II.

SEC. 4. Section 72646 of the Government Code is amended to read:

72646. The marshal shall appoint:

(a) One head, fiscal and administrative services, marshal.

(b) One senior staff assistant, marshal.

(c) One executive secretary, marshal. Appointment to this position shall be at step 3 of the schedule.

(d) Three staff assistants, marshal.

(e) One management secretary, marshal.

(f) One principal clerk.

(g) One supply and reproduction supervisor, marshal.

(h) Two senior secretaries, marshal.

(i) Nine administrative clerks.

(j) One supervising payroll clerk, marshal.

(k) One supply and reproduction assistant, marshal.

(*l*) Sixty deputy clerks, grade III.

(m) Three secretaries, marshal.

(n) Fifty-six deputy clerks, grade II.

(o) Eight deputy clerks, grade I.

(p) Such deputies who shall be keepers, as may be reasonably required pursuant to law, at the fee allowed by law for keeping property.

(q) Six marshal's dispatchers.

(r) One safety officer, marshal.
(s) One head personnel technician, marshal.
(t) One assistant head, fiscal and administrative services, marshal.
(u) One personnel technician, marshal.

SEC. 5. Section 72701 of the Government Code is amended to read:

72701. The judges of the municipal court shall appoint as many commissioners, not exceeding 22, as the business of the court requires. Each commissioner shall possess the same qualifications as the law requires of a judge of the court. Within the jurisdiction of the court and under the direction of the judges, each commissioner shall exercise the powers and perform the duties authorized by law to be performed by commissioners of the superior court and such additional powers and duties as may be prescribed by law. Each commissioner shall hold office at the pleasure of the judges and shall receive a monthly salary in the same sum as is paid the court commissioners of the Superior Court of the County of Los Angeles. If, however, the amount of the salary is fixed under a step plan of compensation based upon tenure of service, each incumbent shall nevertheless receive a salary equal to the top step thereof. In no event shall such salary exceed the salary provided for the judges of the municipal courts. The commissioners shall be ex officio deputy clerks of the court and shall be members of any retirement system which includes attachés of the court. They shall not engage in the private practice of law.

SEC. 6. Section 72702.5 of the Government Code is amended to read:

72702.5. The clerk may appoint one deputy clerk who shall be assistant court administrator, one deputy clerk who shall be deputy court administrator, administrative and financial services, and four deputy clerks who shall be deputy court administrators, operations, and that number of law clerks paid by the hour as approved by the board of supervisors which positions shall not be deemed civil service positions. The positions of assistant court administrator, deputy court administrator, administrative and financial services, deputy court administrator, operations, legal research assistant, and all positions designated in the Performance-Based Pay Plan for the Los Angeles Municipal Court shall not be deemed civil service positions for any person initially appointed to these positions after November 1, 1987. Incumbents with civil service status as of November 1, 1987, shall retain civil service status. Each person appointed to these positions shall serve at the pleasure of the court administrator.

SEC. 7. Section 72703 of the Government Code is amended to read:

72703. The clerk may appoint:

(a) Four deputy clerks who shall be division chiefs and who shall be assigned as chief, accounting and audit division; chief, budget and facilities division; chief, systems division; and chief, management information systems division; and an additional seven deputy clerks

who shall be assigned as division chiefs, operations.

(b) Ten deputy clerks who shall be senior court managers, and one additional deputy clerk who shall be assigned as assistant chief, systems.

(c) Eight deputy clerks who shall be principal administrative assistants, municipal court.

(d) One deputy clerk who shall be personnel administrator, municipal court.

(e) Four deputy clerks who shall be personnel technicians, municipal court.

(f) Two deputy clerks who shall be personnel assistant, municipal court.

(g) Twelve deputy clerks who shall be senior administrative assistants, municipal court.

(h) Four deputy clerks, who shall be administrative assistants, municipal court.

(i) One deputy clerk who shall be supply clerk, municipal court.

(j) One deputy clerk who shall be payroll supervisor, municipal court.

(k) Three deputy clerks who shall be payroll assistants, municipal court.

(*l*) Three deputy clerks who shall be accounting technicians, municipal court.

(m) Seven deputy clerks who shall be staff assistants, municipal court.

(n) One deputy clerk who shall be training officer, municipal court.

(o) Four deputy clerks who shall be accountants, municipal court.

(p) Five deputy clerks who shall be intermediate accountants, municipal court.

(q) Four deputy clerks who shall be senior accountants, municipal court.

(r) One deputy clerk who shall be senior payroll assistant.

(s) Eight deputy clerks who shall be account clerks.

(t) One deputy clerk who shall be assistant capital projects manager.

(u) One deputy clerk who shall be capital projects manager.

(v) One deputy clerk who shall be court information officer.

(w) Two deputy clerks who shall be head personnel technicians.

(x) One deputy clerk who shall be a judicial management intern, municipal court.

(y) One deputy clerk who shall be managing court manager.

(z) One deputy clerk who shall be a personnel clerk, municipal court.

(aa) One deputy clerk who shall be a principal personnel assistant.

(bb) Two deputy clerks who shall be senior personnel assistants.

(cc) One deputy clerk who shall be a procurement assistant II, municipal court.

(dd) One deputy clerk who shall be a supervising accountant, municipal court.

(ee) One deputy clerk who shall be a warehouse manager, municipal court.

(ff) Four deputy clerks who shall be warehouse workers II, municipal court.

(gg) Forty deputy clerks who shall be court managers, municipal court.

(hh) One deputy clerk who shall be a graphic artist, municipal court.

SEC. 8. Section 72704 of the Government Code is amended to read:

72704. The clerk may also appoint:

(a) One hundred fifty-four deputy clerks grade IV, plus one additional such deputy clerk for each judge in excess of 88 and each commissioner or traffic referee in excess of 22 to which the court is or may become entitled by law.

(b) One deputy clerk who shall be secretary to the presiding judge.

(c) One deputy clerk who shall be executive secretary, Los Angeles Municipal Court.

(d) One deputy clerk who shall be senior management secretary, municipal court.

(e) Fourteen deputy clerks who shall be senior judicial secretaries and who shall receive a monthly salary at the same rate specified for the superior court class of senior judicial secretary. Appointments to the positions shall be at step 3 of the schedule.

(f) One hundred two deputy clerks grade III.

(g) Twenty-seven deputy clerks, supervising deputy clerks I.

(h) Three hundred thirty-two deputy municipal court clerks grade II.

(i) Eight deputy clerks, who shall be senior secretaries II, municipal court.

(j) One deputy clerk who shall be senior secretary I, municipal court.

(k) Five deputy clerks who shall be secretaries, municipal court.

(*l*) Four deputy clerks who shall be management secretaries, municipal court.

(m) Two deputy clerks who shall be facilities services assistants, municipal court.

(n) One deputy clerk who shall be procurement aide, municipal court.

(o) Four deputy clerks who shall be facilities planning assistant.

(p) One deputy clerk who shall be statistical analyst.

(q) Two deputy clerks who shall be staff development specialists.

(r) One deputy clerk who shall be a municipal court clerk trainee.

(s) Five deputy clerks who shall be clerical aides.

(t) One deputy clerk who shall be a deputy clerk supervisor.

(u) One deputy clerk who shall be a general maintenance

supervisor.

SEC. 9. Section 72704.5 of the Government Code is amended to read:

72704.5. The clerk may also appoint:

(a) One deputy clerk who shall be computer operations supervisor.

(b) One deputy clerk who shall be data conversion supervisor III.

(c) One deputy clerk who shall be a data conversion supervisor I.

(d) Two deputy clerks who shall be senior data conversion equipment operators.

(e) Fourteen deputy clerks who shall be data systems analysts II.

(f) Three deputy clerks who shall be data systems analysts I.

(g) Two deputy clerks who shall be supervising computer operators.

(h) Two deputy clerks who shall be computer systems operators.

(i) Two deputy clerks who shall be computer equipment operators.

(j) Two deputy clerks who shall be senior data control clerks.

(k) Six deputy clerks who shall be data control clerks.

(*l*) Thirteen deputy clerks who shall be data systems coordinators.

(m) Three deputy clerks who shall be senior program and systems analyst.

(n) Two deputy clerks who shall be principal programmer analysts.

(o) Seven deputy clerks who shall be senior programmer analysts.

(p) One deputy clerk who shall be a systems programmer, municipal court.

(q) Two deputy clerks who shall be telecommunications technicians.

(r) One deputy clerk who shall be a senior telecommunications engineer, municipal court.

SEC. 10. Section 72705 of the Government Code is amended to read:

72705. Whenever reference to a numbered salary schedule is made in any section of this article, the schedule found in the Salary Ordinance of the County of Los Angeles shall apply.

(a) Any deputy clerk of grade I classification who is regularly required to work on Saturdays and Sundays, or any deputy clerk who is required regularly to work a night shift shall receive a two-schedule increase in basic compensation. A night shift is a tour of duty which commences after 2 p.m. and prior to 6 a.m.

(b) Not more than 29 deputy clerks grade IV or municipal court clerk trainees, while assigned to duties in divisions of the court requiring greater skill and responsibility, and, at each branch court of three or more divisions, one deputy clerk grade III assigned to supervise not less than 15 deputy clerks shall receive a two-schedule increase in compensation, provided that such branch court or division in said branch shall not have more than two such deputy

clerk positions compensated under this provision at any one time.

(c) Unless otherwise specifically provided, each person appointed to a position set forth in Sections 72702, 72702.5, 72703, 72704, 72704.5, 72717, and 72717.5 shall, be entitled to the same rights, privileges and benefits allowed Los Angeles County employees as provided in Chapter 1 of Ordinance 6222 of the County of Los Angeles (Title 6, Los Angeles County Code). Any person appointed, promoted, or demoted to another office or position in such service, shall be compensated at the schedule provided for said appointment, promotion, or demotion in Chapter 1 of Ordinance 6222 (Title 6, Los Angeles County Code).

SEC. 11. Section 72708.5 of the Government Code is amended to read:

72708.5. The judges of the court may appoint as many interpreters, not exceeding two, and as many law clerks, not exceeding five, as the business of the court may require. Two of the law clerks may be appointed supervising law clerks. Employees appointed pursuant to this section shall hold office at the pleasure of the judges and shall receive the same compensation as is paid to the respective class of employees in the Superior Court of Los Angeles County. They shall be members of any retirement system which includes attachés of the court.

SEC. 12. Section 72712 of the Government Code is amended to read:

72712. There shall be set aside from the revenue of the court a revolving fund in the amount of seven hundred fifty thousand dollars ($750,000). The fund shall be known as the Reporters' Salary Fund.

At the time of each monthly distribution of the revenue of the court to the cities within the judicial district and to the county within which the court is established, the clerk of the court shall deduct proportionately from their respective total shares such sum as will, when added to the sum then remaining in the fund, equal seven hundred fifty thousand dollars ($750,000) and deposit it in the fund. Such sum shall include the cost incurred pursuant to Section 72194.5 from electronic recording devices, appurtenant equipment, supplies, recordings and transcriptions produced from electronic recording of testimony and proceedings in the court.

Deductions from the county's share of the revenue shall be made from that portion of it distributable to the salary fund of the county, and deductions from each city's share shall be made from that portion of it distributable to the general fund of each city.

For the purposes of this section the "revenue" of the court includes all fines, forfeitures, and fees accruing to the cities or the county, except law library fees.

SEC. 12.5. Section 72717.5 of the Government Code is amended to read:

72717.5. (a) The chief staff attorney, planning and research, municipal courts, may appoint:

(1) One assistant chief staff attorney, planning and research.

(2) Six staff attorneys II, planning and research.

(3) One senior secretary III, who shall receive a monthly salary at the rate specified for senior judicial secretary.

(4) One senior stenographer, municipal courts.

(5) One stenographer, municipal courts.

(6) Fifteen legal research assistants.

(7) Two planning analyst aides, planning and research.

(8) Three senior planning analysts, planning and research.

(9) One data systems analyst II, municipal courts.

(10) One head of management services, planning and research.

(b) The chief staff attorney may appoint a staff attorney I in lieu of a staff attorney II on a one for one substitute basis.

(c) The chief staff attorney may appoint a senior planning analyst in lieu of a staff attorney II on a one-to-one substitute basis.

SEC. 13. Section 72762 is added to the Government Code, to read:

72762. The court administrator of the Alhambra Municipal Court District shall hold office at the pleasure of the judges of that court. This section applies to vacancies occurring on or after January 1, 1991.

SEC. 14. Section 72769 is added to the Government Code, to read:

72769. In the Downey Municipal Court District, the officers and attaches shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of that court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Six deputy municipal court clerks I.

(2) Thirteen deputy municipal court clerks II.

(3) Nine deputy clerks, grade III.

(4) Nine deputy clerks, grade IV.

(5) One chief deputy clerk, who shall be assistant court administrator, and who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 15. Section 72770 is added to the Government Code, to read:

72770. In the East Los Angeles Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Nine deputy municipal court clerks I.

(2) Twelve deputy municipal court clerks II.

(3) Nine deputy clerks grade III.

(4) Twelve deputy clerks grade IV.

(5) One chief deputy clerk who shall be assistant court administrator and who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of the court.

SEC. 16. Section 72772 of the Government Code is amended to

read:

72772. In the Inglewood Municipal Court District, the officers and attaches shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Twelve deputy municipal court clerks I.

(2) Sixteen deputy municipal court clerks II.

(3) Eight deputy clerks grade III.

(4) Eleven deputy clerks grade IV.

(5) One chief deputy clerk, who shall be assistant court administrator and who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of the court.

SEC. 17. Section 72773 of the Government Code is amended to read:

72773. In the Long Beach Municipal District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Twenty-six deputy municipal court clerks I.

(2) Twenty-three deputy municipal court clerks II.

(3) Sixteen deputy clerks grade III.

(4) Thirteen deputy clerks grade IV.

(5) Two deputy clerks, senior judicial secretary.

(6) Five deputy clerks, assistant chief deputy.

(7) One assistant chief deputy, who shall be titled assistant court administrator and who shall receive a monthly salary eight sehedules less than the schedule specified for the court administrator of the court.

(8) Three deputy clerks, supervising deputy clerk I.

(9) Two deputy clerks, supervising deputy clerk II.

(10) Three deputy clerks, principal clerk.

(11) One deputy clerk, senior secretary III.

(12) One deputy clerk, administrative assistant I.

(13) One deputy clerk, data systems analyst II.

(14) One deputy clerk, legal research assistant.

(15) One deputy clerk, senior administrative assistant.

SEC. 18. Section 72775 is added to the Government Code, to read:

72775. In the Malibu Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Four deputy municipal court clerks I.

(2) Five deputy municipal court clerks II.
(3) Four deputy clerks grade III.
(4) Three deputy clerks grade IV.
(5) One deputy clerk, senior secretary III.
(6) One chief deputy clerk who shall be assistant court administrator and who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of the court.

SEC. 19. Section 72776 is added to the Government Code, to read:

72776. The court administrator of the Newhall Municipal Court District shall hold office at the pleasure of the judges of that court. This section applies to vacancies occurring on or after January 1, 1991.

SEC. 20. Section 72777 is added to the Government Code, to read:

72777. The court administrator of the Pasadena Municipal Court District shall hold office at the pleasure of the judges of that court.

SEC. 21. Section 72781 of the Government Code is amended to read:

72781. In the Santa Monica Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court.
(b) The clerk may appoint:
(1) Ten deputy municipal court clerks I.
(2) Eleven deputy municipal court clerks II.
(3) Nine deputy clerks grade III.
(4) Six deputy clerks grade IV.
(5) One deputy clerk, senior judicial secretary.
(6) One deputy clerk, secretary.
(7) One chief deputy clerk who shall be assistant court administrator and who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of the court.
(c) The court administrator shall hold office at the pleasure of the judges of the court. This subdivision applies to vacancies occurring on or after January 1, 1989.

SEC. 22. Section 72783 of the Government Code is amended to read:

72783. In the Southeast Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There shall be one court administrator who shall be the clerk appointed by the judges of the court and who shall hold office at the pleasure of the judges of that court.
(b) The clerk may appoint:
(1) Thirteen deputy municipal court clerks I.
(2) Twelve deputy municipal court clerks II.
(3) Ten deputy clerks grade III.
(4) Eleven deputy clerks grade IV.
(5) One deputy clerk, supervising branch clerk.
(6) One chief deputy clerk who shall be assistant court

administrator and who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of the court.

SEC. 23. Section 74703 of the Government Code is amended to read:

74703. The judges of the Sonoma County Municipal Court may appoint two court commissioners, each of whom shall receive a salary equal to 80 percent of the annual salary of a municipal court judge. The judges may also appoint part-time traffic referees, as needed, to assist in processing traffic caseloads during times of training, illness, or vacation of the traffic referee.

The part-time traffic referees shall have the powers and duties specified in Sections 74201 and 74202, as well as the powers of a deputy clerk of the court, and shall perform such other duties as may be assigned by the court.

Part-time traffic referees shall receive a salary equal to 50 percent of the annual salary of a municipal court judge, except that such compensation shall be prorated as the number of hours actually served relates to a 40-hour workweek. Part-time traffic referees shall not receive sick leave, vacation, or benefits, other than those mandated by state or federal law.

SEC. 24. Section 74705 of the Government Code is amended to read:

74705. Certain classes of employment in the municipal courts are deemed to be equivalent in job responsibility and salary level to certain classes in the service of the County of Sonoma, or in some instances, to such classes plus or minus a specified percentage rate. Whenever the salary of those classes in the service of the County of Sonoma is adjusted by the board of supervisors, the salary of the comparable classes in the municipal courts shall be adjusted to a like extent plus or minus the percentage rate specified in this section, if applicable. Such adjustment shall become effective on the same date as the effective date of the action by the board of supervisors, as it applies to the classes in the service of the county, but such adjustment shall remain effective only until January 1 of the second year following the calendar year in which such adjustment is made.

Municipal court classification	County classification
Clerk administrator	Clerk administrator
Assistant clerk administrator	Assistant clerk administrator
Administrative assistant	Administrative assistant
Municipal court services supervisor	Municipal court services supervisor
Municipal court reporter	Municipal court reporter
Municipal court secretary	Municipal court secretary
Executive secretary	Executive secretary

Municipal court division supervisor	Deputy county clerk III
Municipal courtroom clerk	Superior court clerk
Municipal court clerk III	Deputy county clerk II
Account clerk II/I	Account clerk II/I
Municipal court clerk II	Clerk typist III
Municipal court clerk I	Clerk typist II
Data entry operator II/I	Data entry operator II/I
Clerk typist II/I	Clerk typist II/I

SEC. 25. Section 74708 of the Government Code is amended to read:

74708. In the municipal court in the district which coincides with all the territory in the County of Sonoma, there shall be the following personnel:

(a) The judges together may appoint:
(1) One clerk administrator.
(2) Four municipal court reporters.
(3) Two municipal court secretaries.
(b) The clerk administrator may appoint:
(1) One assistant clerk administrator.
(2) Two administrative assistants.
(3) One municipal court services supervisor.
(4) One executive secretary.
(5) Eight municipal court division supervisors.
(6) Nine municipal courtroom clerks.
(7) Seventeen municipal court clerks III.
(8) Six account clerks II/I.
(9) Two data entry operators II/I.
(10) Twenty-seven and one-half municipal court clerks II/I.
(11) Three clerk typists II/I.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1448

An act to add Section 601 to the Penal Code, relating to crimes.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 601 is added to the Penal Code, to read:

601. (a) Any person is guilty of trespass who makes a credible threat to cause serious bodily injury, as defined in subdivision (a) of Section 417.6, to another person and who does any of the following:

(1) Within 14 days of the threat, unlawfully enters into the residence or real property contiguous to the residence of the person threatened without lawful purpose, and with the intent to execute the threat against the target of the threat.

(2) Within 14 days of the threat, knowing that the place is the threatened person's workplace, unlawfully enters into the workplace of the person threatened and carries out an act or acts to locate the threatened person within the workplace premises without lawful purpose, and with the intent to execute the threat against the target of the threat.

(b) Subdivision (a) is not applicable whenever the residence, the real property, or the workplace described in paragraph (1) or (2) of that subdivision that is entered is the residence, the real property, or the workplace of the person making the threat.

(c) This section shall not be applicable to persons engaged in labor union activities which are permitted to be carried out on the property by the California Agricultural Labor Relations Act, Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code, or by the National Labor Relations Act.

(d) A violation of subdivision (a) is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both a fine and imprisonment.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1449

An act to amend Section 130255 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 130255 of the Public Utilities Code is amended to read:

130255. (a) If a commuter or urban rail transit system is proposed to serve two or more counties, the commissions in those counties shall form a joint powers entity to conduct plan refinement studies, design, select the technology, determine the cost, locate the routes and access points, and supervise the construction, operation, and management of the system.

(b) The joint powers entity shall designate the operator of the system.

(c) If state funds are to be used for the operation of the system, at least four months prior to implementing service on the system, the joint powers entity shall submit its plan for the operation to the Legislature.

CHAPTER 1450

An act to amend Sections 751 and 754 of, and to add Section 754.5 to, the Evidence Code, relating to evidence.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 751 of the Evidence Code is amended to read:

751. (a) An interpreter shall take an oath that he or she will make a true interpretation to the witness in a language that the witness understands and that he or she will make a true interpretation of the witness' answers to questions to counsel, court, or jury, in the English language, with his or her best skill and judgment.

(b) In any proceeding in which a deaf or hard-of-hearing person is testifying under oath, the interpreter certified pursuant to subdivision (f) of Section 754 shall advise the court whenever he or she is unable to comply with his or her oath taken pursuant to subdivision (a).

(c) A translator shall take an oath that he or she will make a true translation in the English language of any writing he or she is to decipher or translate.

(d) An interpreter or translator regularly employed by the court and certified in accordance with Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code, may file an oath as prescribed by this section with the clerk of the court. The filed oath shall serve for all subsequent court proceedings until the appointment is revoked by the court.

SEC. 2. Section 754 of the Evidence Code is amended to read:

754. (a) As used in this section, "deaf or hard-of-hearing person" means a person with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone, but does not include a hard-of-hearing person provided with, and able to fully participate in the proceedings through the use of, an assistive listening system or computer-aided transcription equipment provided pursuant to Section 54.8 of the Civil Code.

(b) In any civil or criminal action, including any action involving a traffic or other infraction or any juvenile court proceeding, or any proceeding to determine the mental competency of a person, or any administrative hearing, where a party or witness is a deaf or hard-of-hearing person and the deaf or hard-of-hearing person is present and participating, the proceedings shall be interpreted in a language that the deaf or hard-of-hearing person understands by a qualified interpreter appointed by the court, tribunal, hearing officer, or other appropriate authority, or as agreed upon by the parties.

(c) For purposes of this section, "appointing authority" means a court, department, board, commission, agency, licensing or legislative body, or other body for proceedings requiring a qualified interpreter.

(d) For the purposes of this section, "interpreter" includes, but is not limited to, an oral interpreter, a sign language interpreter, or a deaf-blind interpreter, depending upon the needs of the deaf or hard-of-hearing person.

(e) For purposes of this section, "intermediary interpreter" means a deaf, hard-of-hearing, or hearing person who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language or between American Sign Language and other foreign languages by acting as an intermediary between the deaf person and the qualified interpreter.

(f) For purposes of this section, "qualified interpreter" means an interpreter who has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for the deaf or hard-of-hearing.

(g) In the event that the appointed interpreter is not familiar with the deaf or hard-of-hearing person's use of particular signs or his or her particular variant of sign language, the court or other appointing

authority shall, in consultation with the deaf or hard-of-hearing person or his or her representative, appoint an intermediary interpreter.

(h) Prior to January 1, 1992, the Judicial Council shall conduct a study to establish the guidelines pursuant to which it shall determine which testing organizations, agencies, or educational institutions will be approved to administer tests for certification of court interpreters for the deaf and hard-of-hearing. It is the intent of the Legislature that the study obtain the widest possible input from the public, including, but not limited to, educational institutions, the judiciary, linguists, members of the State Bar, court interpreters, members of professional interpreting organizations, and members of the deaf and hard-of-hearing communities. After obtaining public comment and completing its study, the Judicial Council shall publish these guidelines and shall approve one or more entities to administer testing for court interpreters for the deaf and hard-of-hearing. Initial approval of testing entities by the Judicial Council shall occur prior to January 1, 1992.

Commencing January 1, 1992, court interpreters for the deaf or hard-of-hearing shall meet the qualifications specified in subdivision (f).

(i) Persons appointed to serve as interpreters under this section shall be paid, in addition to actual travel costs, the prevailing rate paid to persons employed by the court to provide other interpreter services unless such service is considered to be a part of the person's regular duties as an employee of the state, county, or other political subdivision of the state. Payment of the interpreter's fee shall be a charge against the county, or other political subdivision of the state, in which such action is pending. Payment of the interpreter's fee in administrative proceedings shall be a charge against the appointing board, agency, commission, or licensing authority.

(j) No statement, written or oral, made by a person who is deaf or hard-of-hearing in reply to a question of a peace officer, or any other person having a prosecutorial function in any criminal or quasi-criminal investigation or proceeding, may be used against that deaf or hard-of-hearing person unless the statement was made knowingly, voluntarily, and intelligently and was accurately interpreted, or the court makes a special finding that the statement was made knowingly, voluntarily, and intelligently.

(k) In obtaining services of an interpreter for the purpose of obtaining a statement subject to subdivision (j), priority shall be given to first obtaining a qualified interpreter.

(*l*) Nothing in subdivision (j) or (k) shall be deemed to supersede the requirement of subdivision (b) for use of a qualified interpreter for deaf or hard-of-hearing persons participating as parties or witnesses in a trial or hearing.

(m) In any action or proceeding in which a deaf or hard-of-hearing person is a participant, the court or administrative authority shall not commence proceedings until the appointed

interpreter is in full view of and spatially situated to assure proper communication with the deaf or hard-of-hearing person or persons involved as participants.

(n) Each superior court shall maintain a current roster of qualified interpreters certified pursuant to subdivision (f).

SEC. 3. Section 754.5 is added to the Evidence Code, to read:

754.5. Whenever an otherwise valid privilege exists between a deaf or hard-of-hearing person and another person, that privilege is not waived merely because an interpreter was used to facilitate their communication.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1451

An act to add Article 6.6 (commencing with Section 18514) to Chapter 17 of Part 10 of Division 2 of, the Revenue and Taxation Code, relating to taxpayer contributions.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Article 6.6 (commencing with Section 18514) is added to Chapter 17 of Part 10 of Division 2 of the Revenue and Taxation Code, to read:

Article 6.6. Designations to the California Seniors Special Fund

18514. (a) Any taxpayer who is allowed the credit under subdivision (c) of Section 17054 may designate on the tax return that a contribution is being made in an amount equal to the amount of the credit which is to be paid to the California Seniors Special Fund.

(b) The contribution may be made individually by each eligible signatory on the joint return who is allowed the credit under subdivision (c) of Section 17054.

(c) The taxpayer's return shall be treated as if no designation is

made under this article if either of the following apply:

(1) Credits reported on the return are insufficient to cover the amount of the contribution.

(2) The payments received from the taxpayer are insufficient to cover the amount of tax owed plus the contribution.

(d) A designation under subdivision (a) shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable.

(e) The Franchise Tax Board shall revise the forms of the return to allow for the designation permitted under subdivision (a).

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 for any contribution made pursuant to subdivision (a).

18514.1. There is hereby established in the State Treasury the California Seniors Special Fund to receive contributions made pursuant to Section 18514.

The Franchise Tax Board shall notify the Controller of the amount of the credits designated pursuant to Section 18514 to be transferred into the California Seniors Special Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Seniors Special Fund an amount not in excess of the sum of the credits designated by individuals pursuant to Section 18514 for payment into that fund.

18514.2. (a) All money transferred to the California Seniors Special Fund pursuant to Section 18514 shall, upon appropriation, be allocated as follows:

(1) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(2) To the California Commission on Aging, the sum of eighty thousand dollars ($80,000) in each fiscal year, or the balance of the fund if less than that amount remains for the operational support of the Area Agency on Aging Advisory Council of California (TACC) for its advocacy efforts on behalf of the senior citizens of California.

(3) The balance, if any, to the California Department of Aging for allocation on a per capita basis of individuals 60 years of age or older to the area agencies on aging for the support of direct services to senior citizens, as those services have been identified in each agency's area plan. Each area agency on aging which elects to receive moneys from the California Seniors Special Fund shall include in their annual report a narrative describing the amount of moneys so received and the purposes for which the money was expended.

(b) All moneys allocated pursuant to paragraph (2) of subdivision (a) may be carried over from the year in which they were received and encumbered in any following year.

(c) The amount allocated pursuant to paragraph (2) of subdivision (a) may be adjusted annually, as determined by the Department of Finance, to reflect changes in salary adjustments,

price increases, and travel reimbursement adjustments included for all state agencies in the annual Budget Act.

SEC. 2. The California Commission on Aging may accept gifts and grants from any source, public or private, to the California Fund for Senior Citizens in addition to those moneys contributed to the fund by taxpayers under the Personal Income Tax Law. The commission shall allocate gifts and grants made to the California Fund for Senior Citizens pursuant to subparagraph (C) of paragraph (2) of subdivision (a) of Section 18512 of the Revenue and Taxation Code.

SEC. 3. The Legislature finds and declares that contributions transferred to the California Seniors Special Fund pursuant to Section 1 of this act are gifts to the state and not "proceeds of taxes" within the meaning of Article XIII B of the California Constitution.

CHAPTER 1452

An act to add an article heading immediately preceding Section 41950 of, and to add Article 2 (commencing with Section 41970) to Chapter 9 of Part 2 of Division 30 of, the Public Resources Code, relating to solid waste, and making an appropriation therefor.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. An article heading is added immediately preceding Section 41950 of the Public Resources Code, to read:

Article 1. Generally

SEC. 2. Article 2 (commencing with Section 41970) is added to Chapter 9 of Part 2 of Division 30 of the Public Resources Code, to read:

Article 2. Trash Bags

41970. (a) On and after January 1, 1993, every seller of trash bags of 1.0 mil or greater thickness sold in California shall ensure that at least 10 percent of the material used in these trash bags is recycled postconsumer material.

(b) On and after January 1, 1995, every seller of trash bags of 0.75 mil or greater thickness sold in California shall ensure that at least 30 percent of the material used in these trash bags is recycled postconsumer material.

(c) For purposes of this article, "postconsumer material" means a finished product which would normally be disposed of as solid waste,

having completed its intended end-use and product life cycle. "Postconsumer material" does not include manufacturing and fabrication scrap.

(d) For purposes of this article, "seller" refers to any person who sells trash bags to a retailer, distributor, or commercial or industrial user.

41971. On and after January 1, 1993, each seller of trash bags shall, on or before March 1 of each year, certify to the board that it has complied with the requirements of Section 41970 during the preceding calendar year.

41971.5. On and after January 1, 1993, each seller of recycled postconsumer material to a manufacturer of trash bags intended for sale or distribution in California shall, on or before March 1 of each year, certify to the board the percentage of recycled postconsumer materials it sells, the methods by which its recycled postconsumer materials are manufactured, and any other information the board may require for this certification.

41972. Each seller of trash bags and each seller of recycled postconsumer material required to make certifications pursuant to this article may be audited by the board.

41973. On and after January 1, 1995, if any seller of trash bags is unable to obtain sufficient amounts of recycled postconsumer material within any reporting period because (1) it was not available within a reasonable period of time or (2) it did not meet postconsumer material quality standards as promulgated by the board, the seller shall so certify to the board.

41975. If any seller of trash bags or of recycled postconsumer material provides the board with a false or misleading certificate pursuant to Sections 41971 or 41971.5, the board, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

41976. If any seller of trash bags provides the board with a false or misleading certificate pursuant to Section 41973, the board, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

41977. Specific information on material prices included in part of a certificate submitted to the board pursuant to Sections 41971 and 41973 is propriety information and shall not be made available to the general public.

SEC. 3. The sum of one hundred fifty thousand dollars ($150,000) is hereby appropriated from money deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund on and after January 1, 1991, to the California Integrated Waste Management Board to implement Article 2 (commencing with Section 41970) of Chapter 9 of Part 2 of Division 30 of the Public Resources Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the

only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1453

An act to add Article 3 (commencing with Section 43700) to Chapter 3 of Part 5 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Article 3 (commencing with Section 43700) is added to Chapter 3 of Part 5 of the Health and Safety Code, to read:

Article 3. Heavy-Duty Motor Vehicles

43700. The Legislature finds and declares all of the following:

(a) Significant reductions in diesel emissions from existing vehicles can be achieved by the adoption of stricter diesel fuel specifications on sulfur, aromatics, and other fuel properties.

(b) The state board, in consultation with the State Department of Health Services, is evaluating the potential carcinogenic effects of specific constituents of diesel exhaust. Diesel exhaust is known to include, as constituents, many substances known or suspected to be toxic air contaminants.

(c) The Environmental Protection Agency has agreed to study the health effects of various fuels, including diesel, to determine the relative impacts on public health and the environment.

(d) Notwithstanding the ongoing study and review, reduction of emissions from diesel powered vehicles, to the maximum extent feasible, is in the best interests of air quality and public health.

43701. (a) Not later than July 15, 1992, the state board, in consultation with the Bureau of Automotive Repair of the Department of Consumer Affairs and the review committee established pursuant to subdivision (b) of Section 44021, shall, after a public hearing, adopt regulations which require that owners or operators of heavy-duty diesel motor vehicles perform regular inspections of their vehicles for excessive emissions of smoke. The inspection procedure, the frequency of inspections, the emission

standards for smoke, and the actions the vehicle owner or operator is required to take to remedy excessive smoke emissions shall be specified by the state board. Those standards shall be developed in consultation with interested parties. The smoke standards adopted under this subdivision shall not be more stringent than those adopted under Chapter 5 (commencing with Section 44000).

(b) Not later than December 15, 1993, the state board shall, in consultation with the State Energy Resources Conservation and Development Commission, and after a public hearing, adopt regulations which require that heavy-duty diesel motor vehicles subject to subdivision (a) utilize emission control equipment and alternative fuels. The state board shall consider, but not be limited to, the use of cleaner burning diesel fuel, or other methods which will reduce gaseous and smoke emissions to the greatest extent feasible, taking into consideration the cost of compliance. The regulations shall provide that any significant modification of the engine necessary to meet these requirements shall be made during a regularly scheduled major maintenance or overhaul of the vehicle's engine. If the state board requires the use of alternative fuels, it shall do so only to the extent those fuels are available. If the state board determines that heavy-duty diesel motor vehicles, or a class of heavy-duty diesel motor vehicles, cannot be modified to achieve lower emissions, as required by this subdivision, in a cost-effective manner, it shall prepare and submit a report of that determination to the Legislature on or before January 1, 1994.

(c) The state board shall adopt emissions standards and procedures for the qualification of any equipment used to meet the requirements of subdivision (b), and only qualified equipment shall be used.

(d) The state board shall hold a public hearing by December 31, 1992, to consider adopting regulations for low-emission heavy-duty motor vehicles.

CHAPTER 1454

An act to add Article 6.3 (commencing with Section 785) to Chapter 1 of Part 2 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Article 6.3 (commencing with Section 785) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 6.3. Senior Insurance

785. (a) All insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is age 65 or older, a duty of honesty, good faith, and fair dealing. This duty is in addition to any other duty, whether express or implied, that may exist.

(b) Conduct of an insurer, broker, or agent, or other person engaged in the transaction of insurance, during the offer and sale of a policy or certificate previous to the purchase is relevant to any action alleging a breach of the duty of good faith and fair dealing.

(c) This article shall not apply to Medicare supplement insurance as defined in Section 10195 or to long-term care insurance as defined in Section 10231.2.

786. All disability insurance policies and certificates offered for sale to individuals age 65 or older in California shall provide an examination period of 30 days after the receipt of the policy or certificate for purposes of review of the contract at which time the applicant may return to contract. The return shall void the policy or certificate from the beginning, and the parties shall be in the same position as if no contract had been issued. All premiums paid and any policy or membership fee shall be fully refunded to the applicant by the insurer or entity in a timely manner.

(a) For the purposes of this section a timely manner shall be no later than 30 days after the insurer or entity issuing the policy or certificate receives the returned policy or certificate.

(b) If the insurer or entity issuing the policy or certificate fails to refund all of the premiums paid, in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil Procedure. The interest shall be paid from the date the insurer or entity received the returned policy or certificate.

(c) Each policy or certificate shall have a notice prominently printed in no less than 10-point upper case type, on the cover page of the policy or certificate and the outline of coverage, stating that the applicant has the right to return the policy or certificate within 30 days after its receipt via regular mail, and to have the full premium refunded.

786.5. All brokers, agents, or other entities offering a policy or certificate of disability insurance to persons age 65 or older in this state shall provide the prospective insured with a full and accurate comparison with existing health coverage, and shall explain the relationship of the proposed coverage to any existing health benefits provided by Medicare, Medi-Cal, or any other health benefits available to the applicant.

787. Any advertisement or other device designed to produce leads based on a response from a potential insured which is directed towards persons age 65 or older shall disclose that an agent may contact the applicant if that is the fact. In addition, an agent who

makes contact with a person as a result of acquiring that person's name from a lead generating device shall disclose that fact in the initial contact with the person.

(a) No insurer, agent, broker, solicitor, or other person or other entity shall solicit persons age 65 and older in this state for the purchase of disability insurance through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

(b) For the purposes of this section, an advertisement includes envelopes, stationery, business cards, or other materials designed to describe and encourage the purchase of a policy or certificate of disability insurance.

(c) Advertisements shall not employ words, letters, initials, symbols, or other devices which are so similar to those used by governmental agencies, a nonprofit or charitable institution, senior organization, or other insurer that they could have the capacity or tendency to mislead the public. Examples of such misleading materials, include, but are not limited to, those which imply any of the following:

(1) The advertised coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institution or senior organizations.

(2) The advertiser is the same as, is connected with, or is endorsed by governmental agencies, nonprofit or charitable institutions or senior organizations.

(d) No advertisement may use the name of a state or political subdivision thereof in a policy name or description.

(e) No advertisement may use any name, service mark, slogan, symbol, or any device in any manner that implies that the insurer, or the policy or certificate advertised, or that any agency who may call upon the consumer in response to the advertisement, is connected with a governmental agency, such as the Social Security Administration.

(f) No advertisement may imply that the reader may lose a right, or privilege, or benefits under federal, state, or local law if he or she fails to respond to the advertisement.

(g) An insurer, agent, broker, or other entity may not use an address so as to mislead or deceive as to the true identity, location, or licensing status of the insurer, agent, broker, or other entity.

(h) No insurer may use, in the trade name of its insurance policy or certificate, any terminology or words so similar to the name of a governmental agency or governmental program as to have the capacity or the tendency to confuse, deceive, or mislead a prospective purchaser.

(i) All advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer shall have written approval of the insurer before they may be used.

(j) No insurer, agent, broker, or other entity may solicit a

particular class by use of advertisements which state or imply that the occupational or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the policy or certificate being advertised is sold on an individual basis at regular rates.

788. An insurer, agent, broker, or other person engaged in the transaction of insurance shall not knowingly recommend for sale, or sell, disability insurance providing health benefits directly to a Medi-Cal beneficiary who is age 65 or older. For disability insurance providing health benefits sold to a person age 65 or older, the application or other supplemental record signed by the applicant shall contain a question designed to determine if the applicant is receiving Medi-Cal benefits.

788.5. No insurer, broker, agent, or other person shall cause an insured aged 65 or older to replace a disability insurance policy or certificate unnecessarily.

(a) Replacement of insurance which results in a decrease of benefits and an increase in premium is prohibited by this section.

(b) This section shall not apply to those instances in which a policy or certificate is being replaced solely for the purpose of consolidating coverage with a single insurer.

(c) The application for disability insurance for a person age 65 or older shall contain a question or questions designed to elicit information regarding all other existing health and disability coverage in force by type and company.

788.7. No insurer, broker, agent, or other person shall knowingly recommend for purchase or sell disability insurance to a person age 65 or older which results in the insured having coverage, for medical benefits, for more than 100 percent of actual medical expenses.

789. (a) The commissioner shall have the administrative authority to assess penalties against insurers, brokers, agents, and other entities engaged in the transaction of insurance or any other person or entity for violations of this article.

(b) Upon a showing of a violation of this article in any civil action, a court may also assess the penalties prescribed in this chapter.

(c) Whenever the commissioner has reasonable cause to believe or determines after a public hearing that any insurer, agent, broker, or other person or entity engaged in the transaction of insurance, has violated this article the commissioner shall make and serve upon the insurer, broker, agent, or other person or entity a notice of hearing. The notice shall state the commissioner's intent to assess the administrative penalties, the time and place of the hearing, and the conduct, condition or ground upon which the commissioner is holding the hearing, and assessing the penalties. The hearing shall occur within 30 days after the notice is served. Within 30 days after the hearing the commissioner shall issue an order specifying the amount of the penalties to be paid. The penalties resulting from the hearing shall be paid to the Insurance Fund.

(d) The powers vested in the commissioner by this section shall

be in addition to any and all powers and remedies vested in the commissioner by law.

(e) Actions for injunctive relief, penalties specified in Section 789.3, damages, restitution, and all other remedies in law, may be brought in superior court by the Attorney General, district attorney, or city attorney on behalf of the people of California. The court shall award reasonable attorney's fees and court costs to the prevailing plaintiff who establishes a violation of this article.

789.3. (a) Any broker, agent, or other person or other entity engaged in the transactions of insurance, other than an insurer, who violates this article is liable for administrative penalties of no less than two hundred fifty dollars ($250) for the first violation.

(b) Any broker, agent, other person, or other entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this article a second or subsequent time or who commits a knowing violation of this article, is liable for administrative penalties of no less than one thousand dollars ($1,000) and no more than twenty-five thousand dollars ($25,000) for each violation.

(c) Any insurer who violates this article is liable for administrative penalties of no less than two thousand five hundred dollars ($2,500) for the first violation.

(d) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for administrative penalties of no less than ten thousand dollars ($10,000) and no more than one hundred thousand dollars ($100,000) for each violation.

789.5. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the article which can be given effect, without the invalid provision or application, and to this end the provisions of the article are severable.

CHAPTER 1455

An act to amend Sections 54444.1 and 69655 of, to repeal Sections 54528 and 69657 of, and to repeal Article 8.5 (commencing with Section 69660) of Chapter 2 of Part 42 of, the Education Code, to amend Sections 15980 and 15982 of, to add Section 13337.3 to, to repeal Sections 8589.2, 8839, 15972, 16367, and 16367.1 of, and to repeal Article 1.9 (commencing with Section 16369) of Chapter 2 of Division 4 of Title 2 of, the Government Code, to amend Section 1596.865 of, and to repeal Sections 209, 446.8, 1528, 1569.70, 1597.06, 25412, 25413, 25414, and 41514 of, the Health and Safety Code, to amend Section 1864 of the Insurance Code, to repeal Section 30796.5 of the Streets and Highways Code, to amend Section 35581 of, and to repeal Section 1660.6 of, the Vehicle Code, and to repeal Section

5692 of the Welfare and Institutions Code, relating to advisory commissions and task forces.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to review and evaluate existing and proposed state advisory commissions and task forces, and to abolish those which are determined unnecessary or inefficient, or which are undertaking duplicative activities.

SEC. 2. Section 54444.1 of the Education Code is amended to read:

54444.1. (a) In implementing the state master plan for services to migrant children, the Superintendent of Public Instruction shall establish the service regional system as the primary method for the delivery of services to migrant children. The superintendent shall review and approve plans for the establishment of service regions and shall incorporate the following criteria in the approval of regional plans:

(1) The boundaries of regions shall include all geographic areas with migrant and seasonal agricultural workers and fishermen.

(2) Regional service centers shall be located in areas with high concentrations of migrant and seasonal agricultural workers and fishermen. Regional headquarters shall be located in areas: (i) requiring large numbers of these workers for a period of at least two consecutive months during each year, (ii) in areas which normally contract for migrant and seasonal agricultural workers with families rather than single adults, and (iii) in areas where migrant and seasonal agricultural workers are involved in the transition from hand labor to mechanization.

(3) Regions shall be located in each geographic area of the state, except areas within the boundaries of directly funded districts.

(4) Except areas within the boundaries of directly funded districts, regions shall be contiguous to one another and should have no less than 1,500 and no more than 8,000 currently migratory children based upon full-time equivalent enrollment. In no event shall a county be split among two separate regions in order to meet the requirements of this paragraph.

(5) Regions shall be organized so as to provide quality services to all affected parties and maintain fiscal procedures in conformity with requirements adopted by the department.

(6) The boundaries of regions shall be drawn in such a manner as to avoid excessive commuting by personnel or by participants in the programs, not to exceed 100 miles from the schoolsite to the operating agency.

(7) If a proposed region cannot meet the criteria established in paragraphs (4) and (6) of subdivision (a), or both, it may request

that the criteria be waived by the board. The waiver request shall be based upon a study, conducted by the entities, including their respective parent advisory councils, comprising the proposed region, which explains why the waiver is required and which describes likely outcomes if the waiver is not granted.

(8) This subdivision shall become operative on July 1, 1982.

(b) Agencies meeting the criteria set forth in this subdivision and subdivision (f) of Section 54441 may apply to the department for designation as a region. The application shall be in a format with sufficient information and at times designated by the Superintendent of Public Instruction. The application shall include documentation of active participation, review and comment by the appropriate parent advisory councils, and signatures by parent advisory council chairpersons that the review and comment has taken place, and shall further include documentation that the agencies and parent representative comprising the proposed regions have met as a group prior to submission of the application and have agreed upon the formation of, and participation in, the region and a general delineation of the services which will be provided in the region.

Directly funded districts shall be invited by the regions to participate in regional activities and meetings. Staff and parent advisory council members in the districts shall also be invited to regional inservice activities and conferences.

This subdivision shall become operative July 1, 1982.

(c) The State Department of Education may fund directly local educational agencies, in whole or in part, to provide services to eligible migrant children if it is cost effective to do so; if the applicant agency serves not less than 1,500, nor more than 8,000, currently migratory children; has sufficient programmatic and fiscal resources to deliver an effective migrant education program; is in compliance with the federal and state requirements regarding migrant education programs; maintains an ongoing and functional parent advisory council which has voted on a biennial basis to approve the participation in the directly funded program, including the approval of a majority of the members who are the parents of migrant children; and maintains fiscal procedures in conformity with the requirements adopted by the department. All districts which are directly funded on January 1, 1982, may continue to be funded directly, provided that the districts comply with the criteria prescribed by this subdivision, except for the size criterion.

(d) The responsibilities of the various parties involved in the delivery of services to migrant children shall be set forth in a service agreement. A service agreement shall be a legally binding contract signed by the duly constituted authorities at the state, county, district, or private or public nonprofit agencies, or a combination thereof. In the regional delivery system, there shall be two parties to every service agreement; the region and the district or other operating agencies in which the eligible migrant pupils are enrolled.

When a district or agency is funded directly by the state, the parties to the service agreement shall include the department and the district or operating agency in which the eligible migrant pupils are enrolled. The basic responsibilities of these three parties shall be as specified in Section 54444.4.

The parties, whether regional or directly funded, shall take the necessary steps to ensure the effective involvement of the Migrant Parent Advisory Committee for that district or agency. Representatives of the Migrant Parent Advisory Committee shall have the right to be present and participate in all deliberations between the parties regarding the service agreement or any subsequent changes thereto. The service agreement shall include a signed statement from the officers of the Migrant Parent Advisory Committee signifying that such participation has occurred.

This subdivision shall become operative July 1, 1982.

(e) The Superintendent of Public Instruction shall develop an annual operating calendar for regions and directly funded districts including dates for the submission and approval of applications and service agreements. Any changes in regional boundaries for the subsequent fiscal year shall be made and approved by December 31 of the current year. Any changes in funding allocations for regions shall be made by December 31 of the current year or immediately after notification of a federal grant award.

This subdivision shall become operative July 1, 1982.

(f) The Superintendent of Public Instruction shall preserve the supplemental nature of the migrant education program. The program shall be maintained outside the supervision or above the administrative level of the consolidated application programs. The superintendent shall not incorporate the migrant education program into the consolidated application process, except as provided below:

(1) Commencing with the 1983–84 school year, directly funded districts may apply for migrant education funds as part of their consolidated application provided the district parent advisory council on migrant education approves the inclusion.

(2) Commencing with school year 1982–83 and pending the recommendations of the department study and task force report, a copy of the district's annual application for migrant education funds as required by Section 54443.1 shall be attached to the district's annual consolidated application.

SEC. 3. Section 54528 of the Education Code is repealed.

SEC. 4. Section 69655 of the Education Code is amended to read:

69655. (a) Pursuant to Section 69648, the Chancellor of the California Community Colleges shall determine the elements of a statewide data base for the Community College Extended Opportunity Programs and Services, which shall be used for periodic evaluation of the programs and services. The data base shall include all information necessary to demonstrate the statewide progress towards achieving the program goals identified in Section 69640, and program objectives adopted pursuant to Section 69648 including, but

not limited to, all of the following:

(1) The annual number of extended opportunity programs and services (EOPS) students and non-EOPS students who complete degree or certificate programs, transfer programs, or other programs, as determined by state and local matriculation policies.

(2) The annual number of EOPS and non-EOPS students who transfer to institutions which award the baccalaureate degree. In implementing this paragraph, the chancellor shall work in cooperation with the California Postsecondary Education Commission, the President of the University of California, the Chancellor of the California State University, and the Association of Independent Colleges and Universities to establish methods for obtaining the necessary data.

(3) The annual number of EOPS and non-EOPS students completing occupational programs who find career employment.

In implementing this paragraph, the chancellor shall integrate the data collection with existing data collection requirements pertaining to vocational education.

(b) Beginning in January 1987, the chancellor shall annually report to the Legislature regarding the number of students served by the Community College Extended Opportunity Programs and Services and the number of EOPS students who achieve their educational objectives.

SEC. 5. Section 69657 of the Education Code is repealed.

SEC. 6. Article 8.5 (commencing with Section 69660) of Chapter 2 of Part 42 of the Education Code is repealed.

SEC. 7. Section 8589.2 of the Government Code is repealed.

SEC. 8. Section 8839 of the Government Code is repealed.

SEC. 9. Section 13337.3 is added to the Government Code, to read:

13337.3. (a) (1) "Advisory body" means every board, bureau, commission, committee, panel, task force, or similar group created by statute or executive order whose principal function is to review, advise, plan, advocate, or promote.

(2) "State funded" means receiving direct or indirect support from the General Fund, from funds that could be made available for General Fund purposes, or from funds which could be used to free up General Fund moneys. The determination of whether an advisory body is state funded shall be made by the Director of Finance.

(b) On and after January 1, 1993, moneys may not be expended for the support of any state-funded advisory body unless that advisory body is evaluated pursuant to this section.

(c) The Governor's Budget submitted to the Legislature for the 1992–93 fiscal year shall include an addendum which evaluates the need for every state-funded advisory body in state government. That addendum shall identify each advisory body along with the relevant statutory or executive order reference establishing the advisory body, the funding source for each advisory body, including all direct and indirect costs and staff allocated, and an evaluation based on the

following criteria:

(1) The function of the advisory body.

(2) Whether there is another appropriate governmental entity capable and suitable to carry on the function performed by the advisory body even if the new responsibility necessitates changing the composition or mandate of an existing body.

(3) Whether the size of the advisory body is no larger than necessary to assure a range of viewpoints and to reflect this state's diversity (7 to 13 members).

(4) Whether consumers and the general public constitute a majority of voting members or is there justification for specific advice from experts only.

(5) Whether the advisory body is authorized to have an executive officer appointed by the advisory body, and subject to Senate confirmation.

(6) Whether the agenda of the advisory body is significant to the Legislature or to a constitutional officer or if the advisory body reports to the Legislature, or a constitutional officer, whether the Legislature or the constitutional officer share in the appointing authority. If the Governor makes all of the appointments, whether those appointments subject to Senate confirmation.

(7) Whether strict conflict-of-interest provisions are applicable for each appointed member of the advisory body and the meetings of the body are open to the public.

(8) Whether appointing authorities are directed to appoint persons reflecting the ethnic and cultural diversity of the state.

(9) Whether a clear working relationship exists between the advisory body and other governmental agencies with which the advisory body reviews, advises, or plans.

(10) Where the advisory body is created to review and report on a specific issue, whether there is a date for reporting and a date at which time the advisory body shall terminate.

SEC. 9.5. Section 15972 of the Government Code is repealed.

SEC. 10. Section 15980 of the Government Code is amended to read:

15980. The Director of Transportation shall be responsible for generally monitoring the implementation of this part . The funds for administration and monitoring of this program by the Director of Transportation shall be funded by funds made available for that purpose from federal funds.

SEC. 11. Section 15982 of the Government Code is amended to read:

15982. (a) Any social service transportation provider may request an exemption from coordination or consolidation as required under the action plan. The request for exemption shall be submitted to the Director of Transportation, who shall render a decision within 60 days after receiving the request. If the Director of Transportation denies the request, it shall be forwarded to the California Transportation Commission, which shall render a decision within 60

days after receiving it.

The request for exemption shall be granted if, on the basis of information submitted with the request, the Director of Transportation or the commission, as the case may be, finds that the effectiveness of the social transportation service provided the recipients would be impaired by consolidation or coordination.

(b) The Director of Transportation shall adequately inform social service program managers about these requirements well in advance of the deadlines outlined in this section.

(c) The commission shall periodically review, as it deems necessary, the performance of the designated agencies to determine compliance with the action plans and conditions for approval.

SEC. 12. Section 16367 of the Government Code is repealed.

SEC. 13. Section 16367.1 of the Government Code is repealed.

SEC. 14. Article 1.9 (commencing with Section 16369) of Chapter 2 of Division 4 of Title 2 of the Government Code is repealed.

SEC. 15. Section 209 of the Health and Safety Code is repealed.

SEC. 16. Section 446.8 of the Health and Safety Code is repealed.

SEC. 17. Section 1528 of the Health and Safety Code is repealed.

SEC. 18. Section 1569.70 of the Health and Safety Code is repealed.

SEC. 19. Section 1596.865 of the Health and Safety Code is amended to read:

1596.865. It is the intent of the Legislature to encourage any person who provides child care in a child day care facility licensed pursuant to this chapter, Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) to have the following elementary health care training:

(a) Cardiopulmonary resuscitation.

(b) Pediatric first aid.

(c) Preventive health practices, including food preparation and sanitation practices, that reduce the spread of infectious diseases.

SEC. 20. Section 1597.06 of the Health and Safety Code is repealed.

SEC. 21. Section 25412 of the Health and Safety Code is repealed.

SEC. 22. Section 25413 of the Health and Safety Code is repealed.

SEC. 23. Section 25414 of the Health and Safety Code is repealed.

SEC. 24. Section 41514 of the Health and Safety Code is repealed.

SEC. 25. Section 1864 of the Insurance Code is amended to read:

1864. (a) On or before May 1 of each year, commencing in 1987, each insurer engaged in writing child care liability insurance coverage in this state shall submit to the commissioner a report of its operations regarding child care liability claims experience for the last preceding calendar year ending on December 31 on a form furnished by the commissioner. Each report shall separately state the following information for family day care homes, as defined in Section 1596.78 of the Health and Safety Code, and licensed child care centers, as defined in Section 1596.76 of the Health and Safety Code:

(1) Premiums earned.

(2) Premiums written.

(3) Number of claims.

(4) Number of new claims during the reporting period.

(5) Number of claims closed during the reporting period.

(6) Number of claims outstanding at the end of the reporting period.

(7) Total losses incurred.

(8) Total losses incurred as a percentage of premiums earned.

(9) Total number of policies in force on the last day of the reporting period.

(10) Total number of policies canceled.

(11) Total number of policies nonrenewed.

(12) Net underwriting gain or loss.

(13) Separate allocations of expenses for commissions, other acquisition costs, general office expenses, taxes, licenses and fees, and other expenses. The allocations required by this section shall be made by dividing the company's total premiums earned for child care liability insurance by its total premiums earned and applying the ratio determined to the expenses reported in the company's annual statement filed with the commissioner pursuant to Section 900.

(b) The commissioner shall develop and issue reporting forms to insurers at least 90 days prior to the due date of the reports required pursuant to this section.

(c) The Legislature finds that it is in the public interest of the policyholders of this state that insurers writing child care liability insurance permit remittance of premiums to occur on an installment basis.

(d) The information provided under this section pertaining to a specified claim, insurance policy, or insurer shall be confidential and shall only be revealed by the department on a nonspecific basis as part of an aggregate report of claims or policies.

SEC. 26. Section 30796.5 of the Streets and Highways Code is repealed.

SEC. 27. Section 1660.6 of the Vehicle Code is repealed.

SEC. 28. Section 35581 of the Vehicle Code is amended to read:

35581. (a) The Department of Transportation, in cooperation with the Department of California Highway Patrol, shall develop a plan for implementing or identifying new or existing scale facilities at major intermodal terminals which may serve as intermodal weighing facilities for weighing commercial vehicles which transport intermodal freight, prior to their entry onto any highway which is not specifically exempted from weight limitations by a local authority. The plan shall include consideration of options for financing the construction of required intermodal weighing facilities. The plan shall be submitted to the Legislature not later than August 1, 1989.

(b) The Department of Transportation may enter into agreements with local authorities or private entities to provide for exemption from weight restrictions for short distance movement to

an intermodal weighing facility.

(c) The Department of Transportation shall submit an annual report not later than August 1, 1990, and August 1 each year thereafter, describing its progress in developing the intermodal weight determination program, and its recommendations for the future of the program.

SEC. 29. Section 5692 of the Welfare and Institutions Code is repealed.

SEC. 30. It is the intent of the Legislature, in adding Section 13337.3 to the Government Code by Section 9 of this act, to utilize the evaluation prepared by the executive branch in order to consider which advisory boards should continue and which ones should be terminated. If the Legislature agrees with an evaluation and recommendation prepared pursuant to Section 13337.3 that an advisory board should be continued, the Legislature shall include an appropriation for that advisory body in the Budget Act of 1992. If the Legislature agrees with an evaluation and recommendation prepared pursuant to Section 13337.3 that an advisory body should be terminated, the Legislature intends to only provide funding in the Budget Act of 1992 for that advisory board until January 1, 1993, after which funding shall not be available, and the Legislature intends to enact legislation in 1992, effective January 1, 1993, to terminate that advisory body and any other advisory body that it agrees should be terminated.

CHAPTER 1456

An act to amend Section 7065.1 of, and to repeal and add Section 7065.3 of, the Business and Professions Code, relating to contractors.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 7065.1 of the Business and Professions Code is amended to read:

7065.1. Notwithstanding Section 7065, the registrar may waive the examination for a contractor's license under any of the following circumstances:

(a) The qualifying individual has, for five of the seven years immediately preceding the application for licensure, been listed on the official records of the board as a member of the personnel of any licensee who held a license, which was active and in good standing, in the same classification being applied for, and who during the period listed on the license has been actively engaged in a licensee's construction activities in the same classification within which the applicant applies for a license.

(b) The qualifying individual is an immediate member of the family of a licensee whose individual license was active and in good standing for five of the seven years immediately preceding the application for licensure, and the qualifying individual is able to show all of the following:

(1) The qualifying individual has been actively engaged in the licensee's business for five of the seven years immediately preceding the application for licensure.

(2) The license is required to continue the existing family business in the event of the absence or death of the licensee.

(3) An application is made for a new license in the same classifications in which the licensee is or was licensed.

(c) The qualifying individual is an employee of a corporation seeking to replace its former qualifying individual and has been employed by that corporation under the following conditions:

(1) For five of the seven years immediately preceding the application for licensure, the qualifying individual has been continually employed by the corporation in a supervisory capacity in the same classifications being applied for.

(2) For five of the seven years immediately preceding the application for licensure, the corporation has held an active license in good standing in the same classifications being applied for.

For purposes of this section, employees of a corporation shall include, but not be limited to, the officers of a corporation.

SEC. 2. Section 7065.3 of the Business and Professions Code is repealed.

SEC. 3. Section 7065.3 is added to the Business and Professions Code, to read:

7065.3. Notwithstanding Section 7065, upon a conclusive showing by a licensee that he or she possesses experience satisfactory to the registrar in the classification applied for, an additional classification may be added, without further examination, under all of the following conditions:

(a) For five of the seven years immediately preceding the application, the qualifying individual of the licensee has been listed as a member of the personnel of any licensee whose license was active and in good standing, and who during the period listed on a license was actively engaged in the licensee's construction activities.

(b) The qualifying individual for the applicant has had within the last 10 years immediately preceding the filing of the application, not less than four years experience as a journeyman, foreman, supervising employee or contractor in the classification within which the licensee intends to engage in the additional classification as a contractor.

(c) The application is, as determined by the registrar, for a classification which is closely related to the classification or classifications in which the licensee is licensed, or the qualifying individual is associated with a licensed general engineering contractor or licensed general building contractor and is applying for

a classification which is a significant component of the licensed contractor's construction business as determined by the registrar. This section shall not apply to an applicant who is licensed solely within the limited-specialty classifications.

Pursuant to Section 7065, the registrar shall conduct a comprehensive field investigation of no less than 3 percent of applications filed under this section to ensure that the applicants met the experience requirements of this section and shall make public, at quarterly meetings of the Contractors' State License Board, a listing of all applications approved under this section during the previous 12 months, including, but not limited to, the name of the applicant, license number, classification applied for, and existing classifications.

CHAPTER 1457

An act to amend Sections 40440 and 41010 of, and to add Sections 40234 and 40703 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 40234 is added to the Health and Safety Code, to read:

40234. In adopting any regulation, the bay district board shall comply with Section 40703.

SEC. 2. Section 40440 of the Health and Safety Code is amended to read:

40440. (a) The south coast district board shall adopt rules and regulations that carry out the plan and are not in conflict with state law and federal laws and rules and regulations. Upon adoption and approval of subsequent revisions of the plan, these rules and regulations shall be amended, if necessary, to conform to the plan.

(b) The rules and regulations adopted pursuant to subdivision (a) shall do all of the following:

(1) Require the use of best available control technology for new and modified sources and the use of best available retrofit control technology for existing sources.

(2) Promote cleaner burning alternative fuels.

(3) Consistent with Section 40414, provide for indirect source controls in those areas of the south coast district in which there are high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin.

(4) Provide for transportation control measures, as listed in the

plan.

(c) The south coast district board shall adopt rules and regulations that will assure that all its administrative practices and the carrying out of its programs are efficient and cost-effective, consistent with the goals of achieving and maintaining federal and state ambient air quality standards and achieving the purposes of this chapter.

(d) The south coast district board shall determine what is the best available retrofit control technology for existing electric plants, and shall adopt rules and regulations requiring the use of the best available retrofit control technology in existing electric plants, if the board finds and determines that to do so is necessary to carry out the plan.

(e) In adopting any regulation, the south coast district board shall comply with Section 40703.

SEC. 3. Section 40703 is added to the Health and Safety Code, to read:

40703. In adopting any regulation, the district shall consider, pursuant to Section 40922, and make public, its findings related to the cost-effectiveness of a control measure. A district shall make reasonable efforts, to the extent feasible within existing budget constraints, to make specific reference to the direct costs expected to be incurred by regulated parties, including businesses and individuals.

SEC. 4. Section 41010 of the Health and Safety Code is amended to read:

41010. (a) The Sacramento district board shall adopt rules and regulations that are not in conflict with state and federal laws and rules and regulations that reflect the best available technological and administrative practices. Upon adoption and approval of the air quality improvement strategy, the rules and regulations shall be amended, if necessary, to conform to the strategy.

(b) The rules and regulations adopted pursuant to subdivision (a) shall require the use of best available control technology for new and modified sources and the use of best available retrofit control technology for existing sources.

(c) The rules and regulations of the Sacramento County Air Pollution Control District shall remain in effect and shall be enforced by the Sacramento district, until superseded or amended by the Sacramento district board.

(d) In adopting any regulation, the Sacramento district board shall comply with Section 40703.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1458

An act to amend Sections 19486, 19531, and 19549.2 of the Business and Professions Code, relating to horseracing.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 19486 of the Business and Professions Code is amended to read:

19486. (a) No license shall be granted to conduct a horserace meeting upon a track less than one mile in circumference or length to any applicant other than the California State Fair and Exposition, the California State Exposition and Fair, a county fair, district agricultural association, or applicant for harness racing, quarter horse racing, Appaloosa or Arabian racing.

(b) No license shall be granted to conduct a horserace meeting in the central or southern zone upon a track constructed after January 1, 1990, of one mile or more in circumference or length.

SEC. 2. Section 19531 of the Business and Professions Code is amended to read:

19531. The board shall make allocations of racing weeks, including simultaneous racing between zones, as it deems appropriate The maximum number of racing weeks which may be allocated for horseracing other than at the California Exposition and State Fair, or county or district agricultural association fairs, shall be as follows:

(a) For thoroughbred racing: 44 weeks per year in the northern zone; 42 weeks per year in the central zone; and seven weeks per year in the southern zone.

(b) For harness racing: 25 weeks per year in the northern zone.

(c) For quarter horse racing: 25 weeks per year in the northern zone.

(d) For harness racing and quarter horse racing: a total of 77 weeks per year in the combined central and southern zones.

(e) In its written application for a license, an applicant shall state the time of day, consistent with Section 19571, during which it will conduct its racing meeting, and particularly the first race starting time for the various racing days. After receiving a license, a licensee shall not change the first race starting time without securing prior approval of the board.

(f) Notwithstanding this section or any other provision in this chapter, the board shall not allocate dates to a thoroughbred association in the central zone for the purpose of conducting racing during daytime hours if a thoroughbred racing association is conducting racing in the southern zone on the same date during daytime hours.

(g) An association licensed to conduct a racing meeting in the southern zone may operate a satellite wagering facility at a location approved by the board pursuant to Section 19485 if the location is eligible to be used as a satellite wagering facility during any of the following periods:

(1) The first year in which the board allocates racing weeks to the location.

(2) The second year in which the board allocates racing weeks to the location only if at least 20 weeks of racing are allocated to the location during that year.

(3) The third year and any subsequent year in which the board allocates racing weeks to the location only if at least 20 weeks of racing are allocated to the location during each year, and only if the association actually conducted at least 20 weeks of racing at the location during the prior year, unless the failure to race these 20 weeks during any year is caused by a decision of the board to prohibit the overlap of night racing or a decision of the board to issue a competing application to another facility.

SEC. 3. Section 19549.2 of the Business and Professions Code is amended to read:

19549.2. From the weeks available for harness and quarter horse racing pursuant to subdivision (d) of Section 19531, the board may allocate a maximum of 12 weeks of harness racing to the 22nd District Agricultural Association to be conducted on the 22nd District Agricultural Association grounds. The racing shall be conducted by a person other than the 22nd District Agricultural Association. The board shall allocate the weeks authorized by this section only during the months of January, October, November, and December.

CHAPTER 1459

An act to add Chapter 3.5 (commencing with Section 44760) to Part 25 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares as follows:

(1) In order to simply maintain current class size and serve all of the new pupils who are projected to be in the schools in 1996, approximately 80,000 new teachers will be needed on a statewide basis.

(2) In order to decrease pupil to teacher ratios by 20 percent over a five-year period, approximately 115,000 new teachers will be needed on a statewide basis by 1996.

(3) Current projections indicate that, on a statewide basis, 50,000 to 55,000 new teachers will be recruited by 1996, leaving a shortfall by 1996 of between 25,000 and 65,000 teachers.

(4) In addition to overall shortages in teachers, it is projected that in 1996 there will be an even greater shortage in teachers trained in math, science, computer education, English, and special and bilingual education.

(5) Projections indicate that the shortage of bilingual teachers will force non-English speaking pupils into classrooms where they can neither understand the instruction nor communicate with the teacher.

(b) The Legislature recommends that California colleges and universities establish and intensify programs to recruit and retain a diversified teaching force for the elementary and secondary schools. Specifically, those programs should do all of the following:

(1) Increase ethnic diversity in the teaching force and assist beginning teachers to be more effective in teaching ethnically diverse pupil populations.

(2) Work with school districts and schools to increase the retention rate for beginning teachers.

(3) Provide financial and other incentives to assist persons to enter and remain in the teaching profession.

SEC. 2. Chapter 3.5 (commencing with Section 44760) is added to Part 25 of the Education Code, to read:

CHAPTER 3.5. TEACHER INCENTIVE PROGRAM OF 1990

44760. This chapter shall be known, and may be cited, as the "Teacher Incentive Program of 1990."

44761. The Legislature hereby finds and declares that various state and local agencies maintain data that is useful for determining the availability of teachers and other education professionals for service in elementary and secondary schools. The Legislature also finds that at the state level the available data has not been fully integrated and provided to a central reporting system capable of producing periodic reports of the supply and demand of teachers.

The Legislature further finds and declares that the educational resources of the state could be managed most effectively if data related to known or anticipated shortages of educational personnel were available on a timely basis.

44762. The Commission on Teacher Credentialing, in cooperation with the State Department of Education, shall establish and maintain a comprehensive teacher supply and demand reporting system. Notwithstanding Section 22221, the Teachers' Retirement Board shall make information requested by the Commission on Teacher Credentialing available to the commission. The reporting system shall be designed to prepare annual reports on the availability of teachers and other certificated personnel according to the types of credentials and by geographic regions

within the state. To the extent possible, the reporting system shall include data currently being collected and reported by state and local agencies.

44763. (a) Notwithstanding Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code or any other provision of law, each state and local government agency shall provide to the Commission on Teacher Credentialing personal information regarding teachers and other certificated personnel as requested by the commission for the purposes of Section 44762. The Legislature shall transfer for each fiscal year, from the Teacher Credentials Fund to the State Mandates Claims Fund, that amount necessary for the payment for that year from the State Mandates Claims Fund, pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, of claims for reimbursement to local government agencies that are based upon the requirement set forth in this subdivision.

(b) In accordance with the purpose of safeguarding the privacy rights of individuals, it is the intent of the Legislature that personal information be collected, maintained, and disseminated under this chapter only to the extent required to accomplish the purposes of Section 44762. The Commission on Teacher Credentialing shall establish and maintain specific and appropriate policies and practices that protect the privacy rights of individuals as to whom personal information has been received by the commission, and to otherwise implement the legislative intent set forth in this subdivision.

44764. (a) The Commission on Teacher Credentialing shall conduct a study that shall include all of the following:

(1) An evaluation of the effectiveness of teacher education programs in all public and private postsecondary educational institutions in California in encouraging and recruiting highly qualified and ethnically diverse college and university students and graduates to prepare for and enter the teaching profession, with a particular emphasis on academic subject areas having current or anticipated teacher shortages.

(2) An analysis of the extent to which existing policies of federal and state governmental agencies, and of public and private postsecondary educational institutions, support or hinder attempts to increase the pool of students entering teacher credentialing programs.

(3) The commission's recommendations, based upon the results obtained pursuant to paragraphs (1) and (2), for coherent, systematic state teacher recruitment and retention strategies, emphasizing academic subject areas having current or anticipated teacher shortages. Those recommendations shall include proposed legislative and other revisions of state and federal policies and related funding proposals.

(b) In conducting that study, the commission shall seek the assistance of the California State University, the University of California, private colleges and universities, and representatives of

postsecondary teachers and other certificated personnel.

(c) No later than December 1, 1991, the commission shall submit the results of the study described in this section to the Legislature, the Superintendent of Public Instruction, and the State Board of Education.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. The sum of one hundred sixty-eight thousand dollars ($168,000) is hereby appropriated from the Teacher Credentials Fund to the Commission on Teacher Credentialing for the purpose of establishing the annual reporting system on the availability of certificated personnel required by Section 44762 of the Education Code. It is the intent of the Legislature that funding to support the operation of the reporting system in subsequent fiscal years shall be included in the annual Budget Act, and shall be appropriated from the Teacher Credentials Fund.

SEC. 5. The sum of thirty-five thousand dollars ($ 35,000) is hereby appropriated from the Teacher Credentials Fund to the Commission on Teacher Credentialing for the purpose of conducting the study required by Section 44764 of the Education Code.

CHAPTER 1460

An act to amend Sections 2936, 2937, 2938, and 11104.3 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 2936 of the Vehicle Code is amended to read:

2936. The commissioner shall report to the Legislature by January 15 of each year on all of the following:

(a) The condition of the fund.

(b) Identification of any contracts or grants made during the year.

(c) The amount of the grants or contracts.

(d) The services to be provided pursuant to the grants or contracts.

(e) The group or agency contracted with to provide the services.

SEC. 2. Section 2937 of the Vehicle Code is amended to read:

2937. The fees specified in this article shall not be collected after December 31, 1993. However, the commissioner may continue to execute contracts and grants pursuant to Section 2932 with the remaining moneys in the fund.

SEC. 3. Section 2938 of the Vehicle Code is amended to read:

2938. This article shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 4. Section 11104.3 of the Vehicle Code is amended to read:

11104.3. (a) An all-terrain vehicle safety instructor shall:

(1) Be a person who has not been convicted of a crime involving an act of dishonesty, fraud, or deceit with the intent to benefit himself or herself or another substantially, or to injure another substantially; or has not committed any act which, if done as an all-terrain vehicle safety instructor, would be grounds for the suspension or revocation of the all-terrain vehicle safety instructor's license. A conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this section.

(2) Have a high school education or its equivalent and have satisfactorily completed a course of instruction training in all-terrain vehicle safety as approved by the Off-Highway Vehicle Safety Education Committee.

(3) Within three attempts, pass the examination that the department shall require on off-highway vehicle laws, safe driving practices, operation of all-terrain vehicles, and teaching methods and techniques.

(4) Be physically able to safely operate a motor vehicle and to train others in the operation of all-terrain vehicles.

(5) Hold a valid driver's license issued by this state or any contiguous state.

(6) Not be on probation to the department as a negligent operator or the equivalent of that in the state that issued the driver's license.

(7) Have a driver record which does not have an outstanding notice for violating a written promise to appear in court or for willfully failing to pay a lawfully imposed fine, as provided in Section 40509 or 40509.5 or as provided in equivalent statutes in the state that issued the driver's license.

(8) Be 18 years of age or older.

(9) Be sponsored by an all-terrain vehicle safety training organization.

(b) The qualifying requirements in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

CHAPTER 1461

An act to amend Section 33320.5 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 33320.5 of the Health and Safety Code is amended to read:

33320.5. (a) Notwithstanding Section 33320.1, the requirement that privately owned land within a project area be "predominantly urbanized," as that term is defined in subdivision (b) of Section 33320.1, shall not apply to privately owned land within a project area, if the privately owned land is adjacent or in proximity to a military facility or installation which is proposed to be closed pursuant to Public Law 100-526 and the inclusion of the privately owned land is found by an entity formed pursuant to subdivision (b) to be necessary for the effective redevelopment of the military facility or installation and the adjacent area.

(b) The legislative bodies for communities having territory within, adjacent to or in proximity to a military facility or installation described in subdivision (a) may create a separate joint powers agency pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, which shall have and exclusively exercise powers of an agency in furtherance of the redevelopment of a project area approved by the joint powers agency. The joint powers agency so formed shall include as one of its members the county in which the project area is located. In addition to the powers of an agency, the joint powers agency so formed shall also act as the legislative body and planning commission for all approvals and actions required by this part of legislative bodies and planning commissions for the adoption and implementation of a redevelopment plan. However, all land use, planning, and development decisions with regard to the land within the project area shall continue to be under the control and jurisdiction of each of the respective local legislative bodies or planning commissions, as applicable.

(c) The territory included within the project and project area may be contiguous or noncontiguous, and any project area may be located in whole or in part within one or more of the communities impacted by the closure of the military facility or installation, and the land to be included within the project area within the community or communities in proximity to the military facility or installation shall be found necessary for the effective redevelopment of the military facility or installation and the adjacent area. A project area shall not include territory outside the jurisdiction of the communities that are

parties to the joint powers agency without the consent of the legislative body having jurisdiction over the territory proposed to be included within the project area.

(d) A redevelopment plan for the project area shall contain all of the provisions required by this part. However, if the agency finds, based on substantial evidence on the record, that compliance with the requirements of Sections 33333.2 and 33334.1 would make it impracticable to achieve the policies of this section, the agency may eliminate or modify the requirements of Sections 33333.2 and 33334.1.

(e) The redevelopment plan shall provide for either of the following:

(1) A Low- and Moderate-Income Housing Fund, as required by Section 33334.2.

(2) A deferral for depositing all or part of the 20 percent of taxes allocated to the agency pursuant to Section 33670 in the Low- and Moderate-Income Housing Fund if the agency, after conducting a noticed public hearing, makes, and the executive committee of the Southern California Association of Governments reviews and approves, findings supported by substantial evidence that all of the following apply:

(A) The military facility or installation cannot be acquired or developed by private enterprise without the assistance of the agency.

(B) There are no feasible alternative means of financing the acquisition or development of the military facility or installation other than by utilizing the low- and moderate-income housing portion of the taxes which are allocated to the agency pursuant to subdivision (b) of Section 33670.

(C) Failure of the agency to finance the acquisition or development of the military facility or installation would lead to serious economic hardship and job loss.

(D) The redevelopment plan shall specify the period during which less than 20 percent of the taxes which are allocated to the agency pursuant to subdivision (b) of Section 33670, is to be deposited in the Low- and Moderate-Income Housing Fund. The redevelopment plan shall also contain a repayment plan which specifies a date at which time the agency will have made up the deficit created by the deferral, including repayment of the interest at the highest rate received by the agency on funds it deposits during the period of deferral. The repayment plan shall reduce the deficit in the shortest feasible time consistent with the needs of the agency, as specified in the agency's findings.

(f) The joint powers agency acting as the agency, the legislative body or the planning commission, shall follow all procedures under this part applicable to the adoption and amendment of redevelopment plans, except with respect to Sections 33347.5, 33353 to 33353.6, inclusive, Sections 33354.4 to 33354.6, inclusive, and Section 33385.

(g) The agency shall create a fiscal advisory group to consult with

each affected taxing agency and to advise and report to the agency in the manner required of a fiscal review committee by Section 33353.5 on any potential fiscal impact upon affected taxing agencies within the project area. The fiscal advisory group shall consist of the financial officer or treasurer of each city and each county which created the joint powers authority.

(h) The agency shall prepare and distribute to each affected taxing agency a report which includes the information required by Section 33328. The agency shall also prepare an analysis of the report required of a fiscal review committee pursuant to subdivision (m) of Section 33352 and an analysis of the report required of the fiscal advisory group pursuant to subdivision (g).

(i) As used in this section, "in proximity to" means within three miles of the boundary of Norton Air Force Base and within eight miles of George Air Force Base.

(j) The Legislature finds and declares that the closure of two or more military facilities or installations within the County of San Bernardino will cause serious economic hardship in that county, including loss of jobs, increased unemployment, deterioration of properties and land utilization and undue disruption of the lives and activities of the people. Therefore, the Legislature finds and declares that to avoid serious economic hardship and accompanying blight, it is necessary to enact this act which shall apply only within the County of San Bernardino. In enacting this act, it is the policy of the Legislature to assist communities within the County of San Bernardino in their attempt to preserve the military facilities and installations for their continued use as airports and aviation-related purposes.

It is the intent of the Legislature and the commitment of the local authorities to ensure that the existing airfields at both Norton Air Force Base and George Air Force Base are protected, developed, and enhanced as civil aviation public use airports. Therefore, the joint powers authorities authorized by this section should make every reasonable effort to guarantee that these vital airport facilities are retained for general aviation use now and into the future.

(k) Any joint powers agreement entered into pursuant to this section shall provide that the financial needs of each of the parties shall be considered prior to adoption of a redevelopment plan, and may provide that the number of years shall be limited during which bonded indebtedness may be paid using taxes which are allocated to the agency pursuant to subdivision (b) of Section 33670.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances faced by the County of San Bernardino. The County of San Bernardino is the county in which two military facilities or installations are proposed to be closed pursuant to Public Law 100-526. This legislation is, therefore, necessarily applicable only to San Bernardino County.

CHAPTER 1462

An act to add and repeal Section 125228 of the Public Utilities Code, relating to transit.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 125228 is added to the Public Utilities Code, to read:

125228. (a) The Legislature finds and declares that the award of purchase contracts by the board under competitive bid procedures may not be feasible for products and materials which are undergoing rapid technological changes or for the introduction of new technologies into board operations, and that in these circumstances it is in the public interest to consider the broadest possible range of competing products and materials available, fitness of purpose, manufacturer's warranty, and other similar factors in addition to price in the award of these contracts.

(b) Notwithstanding Section 125223, the board may, after a finding by a two-thirds vote that a particular procurement qualifies under subdivision (g), direct that the procurement be conducted through competitive negotiations under this section. For purposes of this section, competitive negotiation includes, but is not limited to, all of the following requirements:

(1) The request for proposals shall be prepared and submitted to an adequate number of qualified sources, as determined by the board, to permit reasonable competition, consistent with the nature and requirements of the procurement. In addition, notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals. The board shall make every effort to generate the maximum feasible number of proposals from qualified sources and shall make a finding to that effect before proceeding to negotiate if only a single response to the request for proposals is received.

(2) The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.

(3) The board shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for contract award.

(4) Contract awards shall be made to the qualified proposer whose proposal will be most advantageous to the board, with price and all other factors considered. If award is not made to the bidder whose proposal contains the lowest price, the board shall make a finding setting forth the basis for the award.

(c) The board may reject any and all proposals and request new proposals.

(d) Prior to making an award, the board shall prepare a price analysis and shall find that the final negotiated price is fair and reasonable, based upon comparable procurements in the marketplace.

(e) Upon making an award to a qualified proposer, the board, upon request, shall make available to all other proposers and to the public an analysis of the award which provides the basis for the selection of that particular qualified proposal.

(f) A person who submits, or who plans to submit, a proposal may protest any acquisition conducted in accordance with this section as follows:

(1) Protests based on the content of the request for proposals shall be filed with the board within 10 calendar days after the request for proposals is first advertised in accordance with subdivision (b). The board shall issue a written decision on the protest prior to opening of proposals. A protest may be renewed by refiling the protest with the board within 15 calendar days after the mailing of the notice of the recommended award.

(2) Any bidder may protest the recommended award on any ground not based upon the content of the request for proposals by filing a protest with the board within 15 calendar days after the mailing of the notice of the recommended award.

(3) Any protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. Protestors shall have an opportunity to appear and be heard before the board prior to the opening of proposals in the case of protests based on the content of the request for proposals, prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the request for proposals.

(g) This section applies only to the purchase by the board of specialized rail transit equipment, computers, telecommunications equipment, fare collection equipment, microwave equipment, and other related electronic equipment and apparatus, and of rail cars. This section does not apply to contracts for construction or for the procurement of any product available in substantial quantities to the general public.

(h) Provisions in any contract concerning women and minority business enterprises, which are in accordance with the request for proposals, shall not be subject to negotiation with the successful bidder.

(i) This section shall remain in effect only until January 1, 1996, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

CHAPTER 1463

An act to amend Section 16500.5 of, and to add Section 16500.65 to, the Welfare and Institutions Code, relating to public social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 16500.5 of the Welfare and Institutions Code is amended to read:

16500.5. (a) (1) The Legislature hereby finds and declares its intent to encourage the continuity of the family unit by:

(A) Providing services to families to avoid or limit out-of-home placement of children through a family preservation program serving children who are at imminent risk of placement and would be eligible for AFDC-FC if they were placed out of their own homes.

(B) Providing supportive services for those children within the meaning of Sections 361 and 364 when they are returned to the family unit or when a minor will probably soon be within the jurisdiction of the juvenile court pursuant to Section 330.

(C) Providing counseling and support designed to eradicate the situation that necessitated intervention.

(2) The Legislature finds that maintaining abused and neglected children in foster care grows increasingly costly each year, and that adequate funding for family services which might enable these children to remain in their homes is not as readily available as funding for foster care placement.

(3) The Legislature further finds that other state bodies have addressed this problem through various systems of flexible reimbursement in child welfare programs that provide for more intensive and appropriate services to prevent foster care placement or significantly reduce the length of stay in foster care.

(4) Accordingly, it is the intent of the Legislature in enacting this section to establish a system of flexible reimbursement in order to evaluate its potential as an efficient, economical, and effective alternative to out-of-home placement of children.

(b) (1) (A) (i) No more than three participating counties selected by the State Department of Social Services, one of which shall be Solano County, on a two-year program basis, may claim, on an annual basis, a portion of the state's share of that county's AFDC-FC expenditures pursuant to subdivision (d) of Section 11450 in advance, provided the county conducts a program of family reunification and family maintenance services for families receiving these services pursuant to Sections 300, 330, 361, and 364.

(ii) The department or a participating county may terminate a

county's participation in the program upon 30 days' notice if the project is deemed unsuccessful by either party.

(iii) For each fiscal year of the two-year program, a participating county may claim in advance an amount up to 10 percent of the projected state's share of AFDC-FC funds to be expended by that county pursuant to subdivision (d) of Section 11450.

(iv) The specific amount of funds to be advanced each year shall be determined by projecting the state share of AFDC-FC General Fund expenditures for abused or neglected children supervised and placed by the county welfare department for each of the program years based upon state expenditures for AFDC-FC for the previous five years.

(B) Except as provided in paragraph (2), in the event that in any program year the sum of a participating county's total AFDC-FC General Fund expenditures for their children, added to the amount expended from the advance to the county, exceeds its total projected AFDC-FC General Fund expenditures for their children for that fiscal year, by 5 percent or less, the county shall share in the funding of that overage on a 25 percent county, 75 percent state/federal cost ratio basis. If the county's total AFDC-FC General Fund expenditures, added to the amount expended from the advance to the county exceeds, by more than 5 percent, the total projected AFDC-FC General Fund expenditures for that fiscal year, the county shall fund that portion of the overage in excess of 5 percent on a 100 percent basis. If the sum of a participating county's total AFDC-FC General Fund expenditures for their children, added to the amount expended from the advance to the county, is less than the total projected AFDC-FC General Fund expenditures for their children for that fiscal year, the county shall receive 25 percent of the amount of the savings.

(2) A participating county's share of expenditures in excess of the projected total may be reduced upon approval of the department and the Department of Finance based on consideration of any unanticipated factors which result in higher than projected AFDC-FC expenditures.

(3) The department shall select no more than three representative counties, one of which shall be Solano County, to participate in the program.

(4) Services which may be provided under this program may include, but are not limited to, counseling, parenting, respite, day treatment, transportation, and homemaking. Additional services may include those enumerated in Sections 16506.1 and 16507.1. The services to be provided pursuant to this section may be determined by each participating county. Each county may contract with individuals and organizations for services to be provided pursuant to this section.

(5) (A) Participating counties authorized by this subdivision shall provide specific programs of direct services based on individual family needs as reflected in the service plans to families of the

following:

(i) Children who are dependent children not taken from physical custody of their parents or guardians pursuant to Section 364.

(ii) Children who are dependent children removed from the physical custody of their parents or guardian pursuant to Section 361.

(iii) Children who it is determined will probably soon be within the jurisdiction of the juvenile court pursuant to Section 330.

(B) The county welfare department social worker may return a dependent minor removed from the home pursuant to Section 361, with appropriate program services, pursuant to an appropriate court order.

(6) The services shall only be provided to families whose children are certified by a juvenile court judge to be children who will be placed in out-of-home care without the provision of services or to be children who can be returned to their families with the provision of services.

(7) The services selected by any participating county shall be reasonable and meritorious and shall demonstrate cost effectiveness and success at avoiding out-of-home placement, or reducing the length of stay in out-of-home placement. A county shall not expend more funds for services under this subdivision than that amount which would be expended for placement in out-of-home care.

(8) The program in each county shall be deemed successful if at least 75 percent of the children receiving services remain in their own home for six months after termination of services, and if 60 percent remain at home one year after services are terminated. With respect to children selected to receive services who have already been removed from their home and placed in out-of-home care, the county program shall be deemed successful if the average length of stay in out-of-home care is 50 percent less than the average length of stay in out-of-home care of children who do not receive program services.

(9) Funds used for services provided under this section shall supplement, not supplant, child welfare services funds available for services pursuant to Sections 16506.1 and 16507.1.

(10) Each county participating in the program authorized by this section may, subject to the approval of the department, continue to utilize the advance fund-claiming mechanism specified in paragraph (1) after the completion of the two-year program, on a two-year basis, if it demonstrates the successful outcome of the county program, based on the criteria for success specified in paragraph (8).

(11) The department shall submit a report to the Legislature that includes data from each participating county demonstrating to what extent each has met the criteria specified in this section. An interim report shall be submitted by the department no later than six months after the conclusion of the three pilot projects with a final report to be submitted after pilot project completion. Programs authorized after the original pilot projects shall submit data to the department upon the department's request. Subsequent reports to the

Legislature on the programs administered pursuant to this section shall be included with the child welfare system report to the Legislature.

(c) A county welfare department social worker or probation officer may, pursuant to an appropriate court order, return a dependent minor or ward of the court removed from the home pursuant to Section 361 to his or her home, with appropriate interagency family preservation program services.

(d) State foster care funds shall remain within the administrative authority of the county welfare department and shall be used only for placement services or placement prevention services or county welfare department administrative cost related to the interagency family preservation program.

(e) To the extent permitted by federal law, any federal funds provided for services to families and children may be utilized for the purposes of this section.

SEC. 2. Section 16500.65 is added to the Welfare and Institutions Code, to read:

16500.65. (a) In addition to the three programs authorized under Section 16500.5, Contra Costa County may implement a family preservation and reunification program. The program shall be administered in accordance with Section 16500.5, including, but not limited to, the funding mechanism set forth in paragraph (1) of subdivision (b) of Section 16500.5, and shall be subject to all of the provisions of that section.

(b) The family preservation program authorized by this section may serve all of the following:

(1) Families receiving those services pursuant to Sections 300, 330, 361, and 364.

(2) Children who have been adjudged wards of the court pursuant to Sections 601 and 602.

(3) Families of children subject to Sections 726 and 727.

(c) The county probation department may, through an interagency agreement with the county welfare department, refer cases to the county welfare department for the direct provision of services under this subdivision.

(d) The county shall ensure that the proportion of funds used for family preservation services for families and children needing those services pursuant to Sections 300, 330, 361, and 364 shall be no less than the proportion of those children in the county's foster care program.

(e) Any private funds made available to the county for family preservation services shall be applied to the AFDC-FC advance through the end of the 1990–91 fiscal year.

(f) The project authorized by this subdivision shall be deemed successful if the following criteria have been met:

(1) At least 75 percent of the children who are not placed in out-of-home care and who receive project services remain in their home for at least six months after the termination of family

preservation services.

(2) Two years after the termination of family preservation services, the average length of out-of-home stay of children selected to receive services under this section who, at the time of selection, are in out-of-home care, is 50 percent less than the average length of stay in out-of-home care for children in out-of-home care who do not receive demonstration project services pursuant to this section.

(3) Two years after project services are terminated, at least 60 percent of the children who were returned home with project services remain at home.

(g) (1) The participating county shall submit, to the department and to the appropriate committees of the Legislature, a preliminary report upon the conclusion of the demonstration project, and a final report six months after the conclusion of the project.

(2) The participating county shall, in the reports required by paragraph (1), demonstrate the extent the project met the criteria for determining the success of the project specified in subdivision (f).

(h) A dependent minor or ward of the court removed from the home pursuant to Section 726 may also be returned to his or her home with appropriate interagency family preservation services as provided in subdivision (c) of Section 16500.5.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide the widest range of emergency services to distressed children and families as soon as possible, and to rapidly initiate services to prevent the disruption or destruction of the family unit, it is necessary for this act to take effect immediately.

CHAPTER 1464

An act relating to teacher credentialing, and making an appropriation therefor.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) The number of pupils enrolled in California public elementary and secondary schools is approximately 4,600,000, and is increasing at the rate of 160,000 per year. These pupils are taught by a teaching force of approximately 200,000 teachers.

(b) To provide teachers for the 160,000 additional pupils who enter the public schools each year, at a ratio of one teacher per 30

pupils, will require at least 5,333 new teachers in our public schools each year. A ratio of one teacher per 24 pupils will require 6,667 new teachers each year to keep pace with growth.

(c) An additional 12,000 new teachers are required each year to replace persons who retire or otherwise leave the teaching profession.

(d) As a result, California has a demonstrated shortage of teachers who are prepared to work with pupils in several shortage subject areas, including math, science, and special education, and of teachers prepared to teach the growing numbers of limited-English-speaking pupils. In addition, both inner-city and rural school districts have experienced difficulties in obtaining an adequate supply of qualified teachers in a wide range of subject areas.

SEC. 2. (a) The Commission on Teacher Credentialing shall conduct a review of alternative avenues for persons to become credentialed to teach in California and shall report its findings and recommendations to the Legislature by November 1, 1991.

(b) In order to ensure competence in teaching and other educational services, the study shall include, but not be limited to, findings and recommendations with regard to all of the following:

(1) Avenues for persons currently employed in private industry to enter teaching.

(2) Standards for both the entry into the alternative routes to certification and for certification.

(3) The use of practicing or retired educators who could serve as a support system for teacher candidates.

(4) The cost associated with the alternative routes, including its design and implementation.

(5) The relationship of the alternative route to a commission-approved program of teacher preparation.

(6) The use of titles other than "teacher" for those candidates pursuing an alternative route.

(7) The review of how other states have addressed the issue of alternative routes to certification.

(8) The estimated number of teachers who will be credentialed as a result of creating additional alternatives to traditional teacher credentialing programs.

The review shall include a summary of the effectiveness of alternative routes to certification that exist under current law and any changes or additional avenues that the commission may recommend.

SEC. 3. The sum of eighty thousand dollars ($80,000) is hereby appropriated from the Teacher Credentials Fund to the Commission on Teacher Credentialing for the purpose of conducting the review pursuant to Section 2 of this act.

CHAPTER 1465

An act to add Section 39141.10 to the Education Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 39141.10 is added to the Education Code, to read:

39141.10. (a) An owned relocatable building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 39140) and Article 6 (commencing with Section 39210). The governing board of a school district may request and obtain from the State Allocation Board a one-time waiver of Article 3 (commencing with Section 39140) and Article 6 (commencing with Section 39210) for a maximum of three years upon presentation of satisfactory evidence to the State Allocation Board that the district is proceeding in a timely manner with a program that will eliminate the need for the owned relocatable facilities within that time period.

(b) This section applies only to relocatable buildings or structures owned by school districts on or before April 17, 1990, and does not authorize school districts to purchase relocatable buildings or structures to be used for school purposes which do not comply with the provisions of Article 3 (commencing with Section 39140) and Article 6 (commencing with Section 39210) of this chapter.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for school districts to obtain waivers from the State Allocation Board for relocatable facilities owned by the districts and maintain critically needed classroom space for the school year beginning in September 1, 1990, it is necessary that this act take effect immediately.

CHAPTER 1466

An act to add and repeal Section 14407.8 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. It is the intention of the Legislature to establish a pilot project to assist in ensuring proper prenatal and postpartum care for mothers and children, thereby improving the long-term health of both the mother and child, reducing the long-term medical costs to the public, and improving the long-term chances of the survival of the child.

SEC. 2. Section 14407.8 is added to the Welfare and Institutions Code, to read:

14407.8. (a) (1) If the director secures the necessary federal waivers, the director shall, on a pilot project basis, authorize not more than two eligible contractors which meet the requirements of either subparagraph (A) or subparagraph (B) of paragraph (2), which selection shall include one publicly sponsored eligible prepaid health plan, to require that any Medi-Cal beneficiary who is pregnant at the time she enrolls with an eligible contractor or who becomes pregnant while enrolled with an eligible contractor to remain enrolled in that health plan during the balance of the pregnancy and until the end of the sixth month following the birth of her child:

(2) For purposes of this subdivision, "eligible contractor" means either of the following:

(A) Any entity which meets both of the following requirements:

(i) It meets the requirements of Section 1396b(m)(2)(F) of Title 42 of the United States Code.

(ii) Its governing board has applied for project status.

(B) A primary care case management provider contracting under Article 2.9 (commencing with Section 14088) of Chapter 7.

(3) An eligible contractor shall remain eligible pursuant to paragraph (2) of subdivision (a) only so long as the contractor meets both of the following requirements:

(A) The contractor is licensed by the Department of Corporations pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(B) The contractor has a contract in effect with the department to operate as a prepaid health plan pursuant to Chapter 8 (commencing with Section 14200) of Part 3 of Division 9.

(4) Any Medi-Cal beneficiary who is enrolled with a participating contractor and becomes pregnant while enrolled with the participating contractor shall be advised, in writing, that if she wishes

to remain enrolled with the participating contractor rather than the Medi-Cal fee-for-service system, that her enrollment may not be canceled during the member's pregnancy and for a period of six months following the delivery of the child, except for good cause.

(5) Any Medi-Cal beneficiary who seeks to enroll with a participating contractor and who is pregnant at the time of enrollment with a participating contractor shall be advised, in writing, that if she enrolls with a participating contractor rather than seeking services under the Medi-Cal fee-for-service system, her prepaid enrollment may not be canceled during the member's pregnancy and for a period of six months following the delivery of the child, except for good cause.

(6) Any Medi-Cal beneficiary who gives birth to a child while enrolled with a participating contractor shall be advised, in writing, of her right to enroll the child with a participating contractor rather than the Medi-Cal fee-for-service system and that if she chooses to enroll the child with a participating contractor, the child's enrollment may not be canceled for a period of six months, except for good cause.

(b) For purposes of this section, good cause shall be limited to the following circumstances:

(1) The beneficiary is enrolled in violation of this article or in violation of the regulations adopted by the department pursuant to this article.

(2) The beneficiary moves outside of the service area of the participating contractor in which the beneficiary is enrolled.

(3) The participating contractor reduces the scope or level of services it offered to Medi-Cal enrollees at the time the beneficiary elected to enroll with the participating contractor except where the reduction also occurs in the Medi-Cal fee-for-service program.

(4) The disenrollment is requested by the participating contractor and approved by the department because the beneficiary fraudulently uses, or permits to be used fraudulently, the beneficiary's Medi-Cal coverage under the plan.

(5) The disenrollment is requested by the participating contractor or the beneficiary and approved by the department because of a breakdown in the physician-patient relationship occurs involving the beneficiary which is irreconcilable after having been processed through the plan's patient relations and grievance systems.

(6) The beneficiary requires services excluded under the participating contractor's contract for which the beneficiary, except for the existence of the pilot project, would be disenrolled from the plan.

(7) (A) The beneficiary's health is demonstrably jeopardized by continuing his or her enrollment with the participating contractor.

(B) In determining whether a beneficiary's health is substantially jeopardized by continuing his or her enrollment with the participating contractor, the following factors shall be considered:

(i) Accessibility of the medical services.

(ii) Hours of operation of the participating contractor.

(iii) Time spent waiting for the receipt of services provided by the participating contractor.

(iv) Transportation.

(8) (A) The beneficiary cannot gain access to needed medical needs without immediate disenrollment.

(B) Any disenrollment for the reason specified in subparagraph (A) shall be implemented on an urgency basis.

(c) Any enrollee with a participating contractor which implements a pilot project pursuant to this section who is pregnant at the time she enrolls with a participating contractor and who elects to enroll with a participating contractor or who becomes pregnant while enrolled with a participating contractor and who elects to remain enrolled with the participating contractor, and a child on whose behalf a choice to remain enrolled with that participating contractor is made by the child's mother, shall be considered public assistance recipients for purposes of Section 14050.1, for the purpose of obtaining medical care for the balance of the pregnancy and until the end of the sixth calendar month following the delivery of the child, regardless of whether the individual or child is otherwise eligible pursuant to Chapter 2 (commencing with Section 11200).

(d) The director may require the participating contractor to maintain any medical or financial records or statistics which the director determines are necessary to make any of the following determinations:

(1) Whether the implementation of the pilot project has positive results on the health of mothers and children who are subject to the guaranteed eligibility and lock-in provisions of the pilot project.

(2) Whether there is any additional cost to the state in providing the care provided under the pilot project.

(3) Whether there are any long-term savings in the cost of providing public sector medical care pursuant to pilot project.

(e) The director shall report to the appropriate committees of the Legislature if the director secures the necessary federal waivers to implement the pilot project authorized by this section, and the date of the commencement of the pilot project.

(f) The director shall report to the appropriate committees of the Legislature on the determinations made pursuant to subdivision (d), including cost effectiveness and modifications that may make the arrangements cost-effective, within 24 months after the commencement of the pilot program authorized by this section.

(g) (1) The department shall submit a report to the appropriate committees of the Legislature on the accomplishments of the program, one year after the completion of the project.

(2) (A) The report required by paragraph (1) shall include a project evaluation and financial statement.

(B) The project evaluation shall include specific data needed to determine the extent the program has been successful.

(3) The project shall be deemed to have met its objectives if all of the following occur:

(A) The number of months of prenatal care and infant care enrollment in the project increase by 20 percent by the end of the first 12 months of the project.

(B) The percentage of low birthweight babies born to persons enrolled in the project is at least 10 percent below the average percentage of low birthweight babies born in the general Medi-Cal population in the same county over the same period of time.

(C) The percentage of babies born to persons who are enrolled in the project requiring neonatal intensive care services during each year of the project is at least 10 percent below the percentage of babies born in the general Medi-Cal population in the same county over the same period of time.

(h) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1467

An act to add Section 31529.6 to the Government Code, relating to county employee retirement.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 31529.6 is added to the Government Code, to read:

31529.6. In addition to the powers granted by Sections 31529, 31529.5, and 31614, the board of retirement and the board of investment may contract with attorneys in private practice for legal services and advice. The boards shall pay reasonable compensation for the legal services and advice. The compensation shall be considered a cost of administration of the system.

This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

CHAPTER 1468

An act relating to transportation, and making an appropriation therefor.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(a) California voters have expressed their support for reducing the state's traffic congestion problems through their approval of Propositions 108, 111, and 116 at the June 5, 1990, direct primary election.

(b) Voter approval of those propositions will make funds available for urban and intercity rail transit projects.

(c) It is in the interest of metropolitan areas to put into place a well planned comprehensive plan to accommodate intercity, passenger, freight, and local rail transportation needs in the most efficient and environmentally acceptable way that furthers regional land use goals.

(d) Identification and assessment of existing rail facilities and corridors form the foundation for developing a sound solution to metropolitan and intercity transportation problems.

(e) Planning an integrated regional transportation system is most efficiently accomplished through a cooperative public and private sector joint effort.

SEC. 2. (a) The Department of Transportation shall conduct a study of the feasibility of the consolidation of railroad freight traffic between Sacramento and Stockton in the rail corridors generally defined by State Highway Routes 5 and 99 for those rail facilities which operate in close proximity. In conducting the study, the department shall do all of the following:

(1) Identify and evaluate specific rail lines and corridors for their potential use as passenger rail lines.

(2) With respect to railroad facilities jointly used by two or more railroad corporations, consider the short-term and long-term costs, benefits, and time savings associated with consolidating freight service on one or more rail lines between Sacramento and Stockton.

(3) Identify the costs of improvements that may be needed to consolidate freight service.

(4) Identify the costs of improvements to existing rail lines that

may be needed to convert to passenger light rail.

(5) Identify abandoned rail lines that may be converted to passenger rail.

(6) Identify rail lines that are feasible for shared rights-of-way with passenger rail transit.

(7) Identify surplus railroad rights-of-way that may be available for urban and intercity passenger rail service as a result of the consolidation of freight traffic into a single railroad facility.

(8) Assess the opportunities for rail transit projects available to the area and respective communities resulting from the recent mass transit bond acts approved by the voters.

(b) The study may include other routes and corridors owned by railroad companies that may be available for and compatible with expansion of passenger rail transit service.

(c) The study shall consider the findings and recommendations in the report prepared by the Los Angeles-Fresno-Bay Area/Sacramento High-Speed Rail Corridor Study Group pursuant to Chapter 197 of the Statutes of 1988.

(d) The department shall file an interim progress report with the Legislature by April 30, 1991, and shall report its findings, conclusions, and recommendations to the Legislature on or before January 1, 1992.

SEC. 3. To assist it in the conduct of the study required by Section 2, the department shall create the Sacramento-San Joaquin Intercity Rail Coordinating Committee consisting of representatives of the Department of Transportation, the Sacramento Regional Transit District, the Stockton Metropolitan Transit District, the Counties of Sacramento and San Joaquin, the Cities of Sacramento, Stockton, Galt, and Lodi, the Sacramento Council of Governments, the San Joaquin Council of Governments, the Southern Pacific Transportation Company, and the Union Pacific Railroad Company. The advisory committee shall direct the conduct of the study and approve the selection and employment of any consultant personnel and the contracting for any consultant services.

SEC. 4. The sum of forty thousand dollars ($40,000) is hereby appropriated from the Transportation Planning and Development Account in the State Transportation Fund to the Department of Transportation for the study required by Section 2 of this act. The Director of Transportation shall make the funds available in an amount equal to funds provided for these purposes from nonstate sources.

CHAPTER 1469

An act to add and repeal Chapter 7.5 (commencing with Section 18425) of Part 4 of Division 9 of the Welfare and Institutions Code, relating to aid to children.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 7.5 (commencing with Section 18425) is added to Part 4 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 7.5. CHILDREN OF PARENTS IN DRUG FACILITIES

18425. (a) The department shall implement a pilot project in the City and County of San Francisco, upon the approval of the board of supervisors, to house an eligible child with the only custodial parent, in a treatment facility, when the parent has been ordered by the court to receive substance abuse treatment in the treatment facility setting.

(b) For purposes of this section, "eligible child" means any child who meets all of the following criteria:

(1) The child has been adjudicated a dependent child of the court pursuant to Section 300.

(2) The custodial parent with whom the child is living is required by the courts, as a condition of family maintenance, to reside in the treatment facility which provides a program of substance abuse treatment to the parent.

(c) The county shall provide services required in family maintenance regulations.

(d) (1) Only treatment facilities which have been certified by the State Department of Alcohol and Drug Programs as meeting the standards adopted by that department pursuant to Section 11830.5 of the Health and Safety Code, may house eligible children for purposes of the pilot program or claim reimbursement pursuant to this chapter.

(2) (A) The county shall submit a proposal to the department outlining the services available to the eligible child in the treatment facility with the custodial parent.

(B) The proposal required by subparagraph (A) shall include all of the following:

(i) The characteristics of the treatment facility.

(ii) The number of beds in the treatment facility.

(iii) A plan outlining the care and supervision arrangements for the eligible child by the custodial parent or other adult clients.

(iv) The ratio of staff to custodial parent and the eligible child

population.

(v) The eating and sleeping arrangements for the custodial parent and eligible child population.

(vi) Fire drill and disaster plan procedures.

(e) (1) (A) The county shall reimburse the treatment facility at the rate of two hundred seventy-one dollars ($271) per month per eligible child housed in the facility.

(B) The participating county shall participate in the reimbursement payment required by subparagraph (A) on behalf of each eligible child, at the sharing ratio specified in subdivision (c) of Section 15200.

(2) The amount of the reimbursement payment specified in paragraph (1) shall be adjusted on July 1 of each fiscal year during the pilot project, pursuant to Section 11453, subject to the availability of funds.

(f) (1) The department shall, on or before December 31, 1993, report to the appropriate committees of the Legislature on the success of the pilot project implemented pursuant to this section.

(2) The report required by paragraph (1) shall include, but not be limited to, all of the following information:

(A) The number of parents in a treatment facility and the number of their children who live with them.

(B) The length of time parents and their eligible children live in the treatment facility.

(C) The number of children removed from their families and placed in foster care following a stay in the facility.

(D) The extent of continued contact by families with the child welfare system following their stay in the facility.

(E) The average annual per person cost, and the total annual cost of the placement.

(g) The pilot project shall be deemed successful if the parents and children served by the pilot project have a higher rate of family maintenance than parents and children who have not been served by the pilot program

(h) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

CHAPTER 1470

An act to amend Section 12528 of, and to add Section 12530 to, the Elections Code, relating to election campaigns.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 12528 of the Elections Code is amended to read:

12528. (a) A candidate or state measure proponent is liable for any slander or libel committed by a committee which is controlled by that candidate or state measure proponent as defined by Section 82016 of the Government Code if the candidate or state measure proponent willfully and knowingly directs or permits the libel or slander.

(b) A person who is a sponsor of a sponsored committee, as defined by Section 82048.7 of the Government Code, is liable for any slander or libel committed by the sponsored committee if the sponsor willfully and knowingly directs or permits the libel or slander.

SEC. 2. Section 12530 is added to the Elections Code, to read:

12530. (a) In any action for libel or slander brought by a candidate, the willingness or unwillingness of the defendant to retract or correct a communication made in the course of a campaign, and his or her action in doing so, shall be admissible in evidence in the exemplary damages phase of a bifurcated trial.

(b) The remedy provided by this section is in addition to any other remedy provided by law.

CHAPTER 1471

An act to add and repeal Chapter 3.35 (commencing with Section 44720) of Part 25 of the Education Code, relating to education.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) In 1987, Republican Governor John Ashcroft of Missouri, with the Education Commission of the States, convened a national symposium highlighting the Parents As Teachers model program. Entitled "Investing in the Beginning: New Directions in Public Policy for Young Children and Their Families," the conference

involved governors, lawmakers, education leaders, and community leaders from across the country.

(b) In December of 1987, the California Commission on Educational Quality released its preliminary report with the following proposal: "The Commission recognizes that home environment and parental attitudes about the value of education can have a significant effect on a child's ability or desire to learn. . . The most successful students are taught these values during their very early years so that they can enter the K-12 system with positive, receptive attitudes. . ."

(c) After seven years of operation, the Missouri Model Parents As Teachers program has demonstrated the following:

(1) Participating children ranked in the 75th percentile in mental processing and at the 85th percentile in school-related achievement, in contrast with the comparison group which scored at the 55th and 61st percentiles, respectively.

(2) Of the 25 percent of participating children identified as "at risk," more than one-half of these at-risk conditions were reported to have been corrected or to have improved. Ninety-five percent of the participating families referred for medical services reported receiving adequate help.

(3) Ninety-nine percent of responding families reported a high degree of satisfaction with all project services, with home visits identified as the most valuable service. Ninety-seven percent of parents felt that project services made a positive difference in the way they perceived their parenting role.

(d) In 1985–86, all public schools in Missouri were involved in voluntary Parents As Teachers programs funded by the Legislature and Governor.

SEC. 2. The Legislature also finds and declares the following:

(a) A well-substantiated body of research on how children learn and grow clearly indicates that a child's most productive and influential years of learning occur before the age of five.

(b) Experts in child development generally agree that 50 percent of intelligence, and the great majority of language skills, are developed by age four, and that these, along with the establishment of curiosity and social skills, lay the foundations for all further learning.

(c) Failure in the early years to develop adequately in these areas has been shown to lead directly to underachievement and failure in the elementary grades and beyond.

(d) Most of the children headed for academic difficulty at age six and beyond are, by age three, already significantly behind their peers.

(e) After over 20 years of remedial educational programs, such as State Compensatory Education and Head Start, California is still faced with over a 25 percent dropout rate, and the Hispanic dropout rate is near 40 percent.

(f) The potential dropout often comes from a home in which

well-intentioned but untrained parents have not gained, or do not use effectively, their personal resources to adequately nurture in their child the intellectual and social skills required for success in the early grades.

(g) About 25 percent of California's pupils now need costly special or remedial education before they graduate from high school.

(h) The chief economic competitors to California and the United States in high-tech manufacturing and services can count on employee literacy rates of 90 percent or more, while California's enterprises can now count on an employee literacy rate of no more than 75 percent.

(i) Experts agree that literacy skills are most often successfully formed in the early years at home.

(j) Parents are the first and most influential teachers in their child's life and a free developmental resource for their child.

(k) Neither public nor private institutions are systematically providing a meaningful number of California's parents with research-based, up-to-date instruction in giving their children the best possible beginning.

(*l*) The participation of over 80 percent of the women of this state in California's work force, as projected to occur within the next decade, will have a significant impact on both the quantity and quality of parenting time that California's families will be able to give their children.

(m) The family is the rightful and most influential first educational delivery system for the child.

(n) Evidence exists that a child's early experiences can significantly enhance or inhibit development and learning. It is both educationally sound and cost-effective for schools to work cooperatively with the home during the crucial first years.

(o) High quality parenting is truly a national resource. It is not, however, a "natural resource," but a learned skill that can be improved for the benefit of the individual family and for our society.

(p) The Parents As Teachers program operated in the State of Missouri is an exemplary, research-based, and cost-effective program for utilizing and improving parental skills to nurture cognitive, language, and social skills in the earliest years of childhood.

SEC. 3. Chapter 3.35 (commencing with Section 44720) is added to Part 25 of the Education Code, to read:

CHAPTER 3.35. PARENTS AS TEACHERS GRANT PROGRAM

44720. The Parents As Teachers Grant Program is hereby established. The statewide grant program shall be coordinated through county offices of education with selected participating school districts or a consortium of school districts. The program shall address the educational needs of targeted parents of children three years of age or less, and shall contain the following elements:

(a) The use of qualified educators who are professionally trained

in child development and parenting.

(b) The provision by participating school districts of a course of instruction in child development and parenting, on a voluntary enrollment basis, to targeted parents of children from infancy through age three, especially in their homes and in appropriate community settings, in a cost-effective, accessible, and convenient manner. That course of instruction shall include all of the following:

(1) Timely and practical information and guidance on development in language, cognitive, and social skills.

(2) Instruction in the effective use of community parenting resources, including developmental and medical screening and, as needed, early intervention for children through the first three years of life, contingent on the availability of resources and the level of voluntary parental participation.

(3) Monthly visits to the home of each participating parent, as part of that course of instruction, by one or more of the qualified educators administering the course.

(4) Services shall be prioritized and targeted to parents below the age of 20.

44721. No later than March 1, 1991, and no later than March 1 of each succeeding year through 1994, the State Department of Education shall develop requests for proposals, pursuant to which it shall select applicants to the grant program from county offices of education. The department shall select up to six applicants in the first year, 12 applicants in the second year, 18 applicants in the third year, and 22 applicants in the fourth year. The request for proposal shall require applicants to demonstrate all of the following:

(a) Training in the Parents As Teachers program operated in the State of Missouri.

(b) Significant local support for the project from school district administrators and boards, county administrators and boards, and local parent and children advocacy organizations, including, whenever possible, formal support from the county office of education or through multidistrict agreements.

(c) Racial, cultural, geographic, and economic diversity in the targeted population.

44722. (a) The objectives of each of the projects operated under the program established by this chapter include all of the following:

(1) The demonstration, by parents who have participated in the program for not less than 28 months, of the development of parenting skills provided through the course of instruction described in Section 44720, as evidenced by progress on the part of their children as follows:

(A) Intellectual and language development that is significantly better statistically than that demonstrated by a local comparison group or by the normed group of nationally representative children.

(B) Social development that is significantly more positive statistically than that demonstrated by a local comparison group of children as measured by observational instruments developed for

use in the Parents As Teachers Grant Program.

(2) The demonstration, by parents who have participated in the program for not less than 28 months, of all of the following:

(A) The ability of the parents, at an early stage, to recognize, in the child, indications of potential physical, mental, or emotional impairment and to intervene in order to prevent or alleviate that impairment. The ability of the parents in the program shall be compared to a local comparison group based upon a statistical measure of parental recognition of, and intervention in, these potential impairments.

(B) A statistically improved knowledge level of child development and child rearing practices, as measured by the comparison instrument developed to measure this component in the Parents As Teachers Grant Program.

(C) Positive feelings about the usefulness of the program, as measured by the instrument to measure this component in the Parents As Teachers Grant Program.

(D) Positive attitudes toward the school district, as measured by the instrument developed to measure this component in the Parents As Teachers Grant Program.

(3) The retention in the project, at the end of the third year of operation, of not less than 80 percent of initial participants who remain in the district, as measured by a project statistical report.

(4) The development, no later than by the end of the third year, of a complete set of materials and instructional strategies in both the English and Spanish languages, or in the English language and any other language that addresses the needs of the school district, for the operation of the project. The materials and instructional strategies shall be certified by a panel of bilingually qualified parent educators and shall be made available both in print and in an audio visual format.

(b) As a condition of receiving funds for the purposes of this chapter, each county office selected to operate a grant program shall provide written notice, to the extent feasible, by mail or other appropriate means, to all parents of newborns within the boundaries of the district of the availability of the pilot project.

(c) The State Department of Education shall develop and provide an in-services training program based upon the model developed and utilized in the Parents As Teachers program operated in the State of Missouri. The department shall require applicants selected to the grant program, as condition for the receipt of grant proceeds, to participate in the in-service training program.

(d) No later than January 1, 1995, the State Department of Education shall assess the effectiveness and cost of the program operated under this chapter and shall report accordingly to the Legislature.

44723. This chapter shall become inoperative on June 30, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1997, deletes or

extends the dates on which it becomes inoperative and is repealed.

SEC. 4. (a) It is the intent of the Legislature that one million one hundred thousand dollars ($1,100,000) be appropriated in the 1991–92 fiscal year to the State Department of Education for the purposes of Chapter 3.5 (commencing with Section 44720) of Part 25 of the Education Code, contingent upon the passage of, and the receipt of funds pursuant to, the federal Family Involvement in Education Act of 1990.

(b) Funding for continuation and expansion of the grant program described in subdivision (b) shall be provided by federal funds received pursuant to the Family Involvement in Education Act of 1990 and included in future budget acts.

CHAPTER 1472

An act to amend Sections 199.70 and 199.71 of the Health and Safety Code, relating to AIDS.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The incidence of adult and pediatric acquired immune deficiency syndrome (AIDS) cases and infection with the human immunodeficiency virus (HIV) is increasing rapidly among many of California's ethnic and racial minority populations.

(b) Implementation of culturally sensitive, comprehensive prevention education programs in racial and ethnic minority communities is critical to efforts to control HIV infection.

(c) AIDS service agencies have a need for culturally relevant educational materials in several languages. Frequently those agencies have neither the in-house capabilities to develop multilanguage specific and culturally relevant materials or to modify and translate English materials, nor adequate financial resources to purchase those services.

(d) The provision of quality translation services through one centralized site or several sites may facilitate the development of culturally appropriate materials in a variety of languages.

(e) The present method of reporting AIDS and HIV infection prevalence and incidence data among the Asian-Pacific Islander communities treats those communities as if they are one large, heterogeneous community, which makes it difficult to plan and deliver prevention and treatment services targeted to specific ethnic groups within those populations.

SEC. 2. Section 199.70 of the Health and Safety Code is amended

to read:

199.70. The intent of the Legislature in enacting this chapter is as follows:

(a) To fund specified pilot AIDS education programs.

(b) To fund pilot projects to demonstrate the value of noninstitutional health care services such as hospice, home health, and attendant care in controlling costs and providing humane care to people with AIDS and AIDS-related conditions.

(c) To fund clinical research.

(d) To fund the development of an AIDS Mental Health Project.

(e) To fund specified needs assessments, studies, and program evaluations.

(f) To authorize the use of funds appropriated by Section 6 of Chapter 23 of the Statutes of 1985 for preventive education for individuals who are seropositive as a result of antibody testing.

(g) To promote broad-based support for AIDS programs by encouraging community level networking and coordination of efforts among private sector, nonprofit, and public service agencies as well as health care professionals and providers of essential services.

(h) To promote an aggressive community-based HIV infection prevention program in all communities and areas where behaviors and prevalence indicate high risk of HIV infection, and to encourage local programs to involve racial and ethnic minorities in a leading role to plan the development, implementation, and evaluation of preventive education, HIV testing, delivery of care, and research activities that are necessary to the formation of a comprehensive, community-based, culturally sensitive HIV infection prevention strategy.

SEC. 3. Section 199.71 of the Health and Safety Code is amended to read:

199.71. (a) The State Department of Health Services shall:

(1) Additionally, use funds appropriated by Section 6 of Chapter 23 of the Statutes of 1985 for purposes of making reimbursements to counties pursuant to Section 1632, for preventive education for individuals who are seropositive as a result of antibody testing.

(2) Issue contracts to evaluate the effectiveness of the AIDS information and education program conducted by the state department.

(3) Issue contracts for development and implementation of pilot programs of professional education and training for hospital, home health agency, and attendant care workers.

(4) Issue contracts for the development and implementation of pilot programs to reduce the spread of AIDS through residential detoxification and outpatient detoxification and treatment services for intravenous drug users with AIDS or AIDS-related conditions.

(5) Monitor state and federal AIDS-related budget and policy development, and coordinate budget items to ensure that funding for matters related to AIDS is adequate and complete within the state department each fiscal year.

(6) Develop and maintain an information clearinghouse within the state department including periodic updates or releases to inform health professionals or community organizations providing services to people with AIDS or AIDS-related conditions of the status of current or new clinical drug trials. These updates shall be compiled through review of scientific journals and in conjunction with the UC AIDS Task Force and researchers conducting clinical drug trials in California.

(7) Review, edit, and input summaries from scientific journals into the Computerized AIDS Information Network (CAIN), and do outreach about CAIN availability to health professionals.

(8) Develop and conduct a needs assessment of the availability of supportive services for people with AIDS or AIDS-related conditions. The needs assessment shall be conducted in conjunction with the state's AIDS education contractors and with any public or private agencies providing services to people with AIDS or AIDS-related conditions.

(9) Promote information and education programs for the general public to correct misinformation about AIDS. This shall include, but need not be limited to, periodic press releases to the printed and broadcast media and public service announcements.

(10) Prepare a report to the Legislature on the feasibility of coordinating various levels of health care, including health facility licensure categories within one program in a city and county which would serve persons with HIV infections, AIDS-related complex, and AIDS. The levels of health care to be covered in the report include, but are not limited to, general acute care hospital, acute psychiatric hospital, skilled nursing facility, hospice, intermediate care facility, residential care facility, adult day health care facility, and congregate living health facility. The report shall be developed in cooperation with the Office of Statewide Health Planning and Development, and shall be submitted to the Legislature before July 1, 1990. The State Director of Health Services may contract for services necessary for completion of the report that cannot be provided through existing resources of the state department.

(11) Establish, with the assistance of other state agencies as the state department deems appropriate, centralized translation services to facilitate development of multilanguage, culturally relevant educational materials on HIV infection.

(12) Include, to the extent feasible, in its HIV surveillance and reporting practices, a breakdown of the major Asian-Pacific Islander subgroup populations. This breakdown shall be reflected in the surveillance and morbidity statistics issued by the director pursuant to Section 199.73.

(b) The State Director of Health Services shall contract for a prospective two-year study to accomplish the following objectives:

(1) Determine the medical costs of AIDS, comparing inpatient care, outpatient care, physician services, and community support services.

(2) The study shall include cost factors in the review of inpatient costs which may not be apparent in the analysis of charges, such as private rooms and social work.

The study shall include an interim report to the Legislature six months after receipt of funding and a final report to the Legislature within two years of receipt of funding so that the state can be in a knowledgeable position to plan for and provide the services and funding needed to meet this public health crisis.

(c) Notwithstanding Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, if the State Director of Health Services determines that it is in the best interest of the state to enter into a contract for the purposes specified below without competitive bids, then the state director may, during the 1985–86 fiscal year, enter into a sole source contract for all of the following:

(1) Educational program evaluation.

(2) Education of hospital, home health agency, and attendant care workers.

(3) Drug education and treatment programs.

(4) The cost-of-care study.

(d) Notwithstanding Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, if the State Director of Health Services determines that it is in the best interest of the state to enter into a contract for the purposes of the preparation of the feasibility report required by paragraph (10) of subdivision (a) without competitive bids, then the state director may enter into a sole source contract for the preparation of the feasibility report. The contract for the feasibility report shall be exempt from the requirement of approval by the Department of General Services and the Department of Finance.

SEC. 4. It is the intent of the Legislature that the State Department of Health Services implement the provisions of this act with existing funds.

CHAPTER 1473

An act to amend Sections 1031 and 1031.5 of the Government Code, relating to peace officers.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1031 of the Government Code is amended to read:

1031. Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum

standards:

(a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

(b) Be at least 18 years of age.

(c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose any criminal record.

(d) Be of good moral character, as determined by a thorough background investigation.

(e) Be a high school graduate, pass the General Education Development Test indicating high school graduation level, or have attained a two-year or four-year degree from a college or university accredited by the Western Association of Colleges and Universities; provided that this subdivision shall not apply to any public officer or employee who was employed, prior to the effective date of the amendment of this section made at the 1971 Regular Session of the Legislature, in any position declared by law prior to the effective date of such amendment to be peace officer positions.

(f) Be found to be free from any physical, emotional, or mental condition which might adversely affect the exercise of the powers of a peace officer. Physical condition shall be evaluated by a licensed physician and surgeon. Emotional and mental condition shall be evaluated by a licensed physician and surgeon or by a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders.

This section shall not be construed to preclude the adoption of additional or higher standards, including age.

SEC. 2. Section 1031.5 of the Government Code is amended to read:

1031.5. (a) Any person employed by a governmental agency on September 13, 1982, as a peace officer or a peace officer trainee, or who, prior to September 13, 1982, had applied to fill a position as a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, is not subject to the requirement of subdivision (a) of Section 1031 prior to its amendment by Chapter 943 of the Statutes of 1982, provided that any person qualifying for this exemption shall, as soon as legally possible, apply for and meet all of the requirements for United States citizenship specified in existing law, and shall be subject to subdivisions (b) and (c).

(b) Any permanent resident alien who is employed as a peace officer shall diligently cooperate with the Immigration and Naturalization Service in the processing of his or her application for citizenship and shall be disqualified from holding that position if, three years after the filing of his or her application for employment, the person has not obtained citizenship due to his or her failure to cooperate in the processing of the application for citizenship.

(c) Any permanent resident alien who is employed as a peace

officer shall be disqualified from holding that position if his or her application for citizenship is denied.

CHAPTER 1474

An act to amend Section 8571 of the Government Code, and to amend Section 1253 of the Unemployment Insurance Code, relating to unemployment compensation.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 8571 of the Government Code is amended to read:

8571. During a state of war emergency or a state of emergency the Governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency, including subdivision (d) of Section 1253 of the Unemployment Insurance Code, where the Governor determines and declares that strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay the mitigation of the effects of the emergency.

SEC. 2. Section 1253 of the Unemployment Insurance Code is amended to read:

1253. An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:

(a) A claim for benefits with respect to that week has been made in accordance with authorized regulations.

(b) He or she has registered for work, and thereafter continued to report, at a public employment office or any other place as the director may approve. Either or both of the requirements of this subdivision may be waived or altered by authorized regulation as to partially employed individuals attached to regular jobs.

(c) He or she was able to work and available for work for that week.

(d) He has been unemployed for a waiting period of one week as defined in Section 1254, unless this waiting period has been waived pursuant to Section 8571 of the Government Code.

(e) He or she conducted a search for suitable work in accordance with specific and reasonable instructions of a public employment office.

SEC. 3. Notwithstanding any other provision of law, the Director of Employment Development shall not assess nor collect any penalties for nonpayment of those billings sent to public entities on or after May 22, 1984, and before October 31, 1990, and which remain

unpaid on October 1, 1990. This provision shall only apply to local agencies which had at any time protested the payment of their charges because the courts had found the California Unemployment Insurance Program to be a state-mandated local program which entitled local government to reimbursement of their costs.

CHAPTER 1475

An act to add Section 25000.1 to the Public Resources Code, and to add Section 701.1 to the Public Utilities Code, relating to energy resources.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 25000.1 is added to the Public Resources Code, to read:

25000.1. (a) The Legislature further finds and declares that, in addition to their other ratepayer protection objectives, a principal goal of electric and natural gas utilities' resource planning and investment shall be to minimize the cost to society of the reliable energy services that are provided by natural gas and electricity, and to improve the environment and to encourage the diversity of energy sources through improvements in energy efficiency and development of renewable energy resources, such as wind, solar, and geothermal energy.

(b) The Legislature further finds and declares that, in addition to any appropriate investments in energy production, electrical and natural gas utilities should seek to exploit all practicable and cost-effective conservation and improvements in the efficiency of energy use and distribution that offer equivalent or better system reliability, and which are not being exploited by any other entity.

(c) In calculating the cost effectiveness of energy resources, including conservation and load management options, the commission shall include a value for any costs and benefits to the environment, including air quality. The commission shall ensure that any values it develops pursuant to this section are consistent with values developed by the Public Utilities Commission pursuant to Section 701.1 of the Public Utilities Code. However, if the commission determines that a value developed pursuant to this subdivision is not consistent with a value developed by the Public Utilities Commission pursuant to subdivision (c) of Section 701.1 of the Public Utilities Code, the commission may nonetheless use this value if, in the appropriate record of its proceedings, it states its reasons for using the value it has selected.

SEC. 2. Section 701.1 is added to the Public Utilities Code, to

read:

701.1. (a) The Legislature finds and declares that, in addition to other ratepayer protection objectives, a principal goal of electric and natural gas utilities' resource planning and investment shall be to minimize the cost to society of the reliable energy services that are provided by natural gas and electricity, and to improve the environment and to encourage the diversity of energy sources through improvements in energy efficiency and development of renewable energy resources, such as wind, solar, and geothermal energy.

(b) The Legislature further finds and declares that, in addition to any appropriate investments in energy production, electrical and natural gas utilities should seek to exploit all practicable and cost-effective conservation and improvements in the efficiency of energy use and distribution that offer equivalent or better system reliability, and which are not being exploited by any other entity.

(c) In calculating the cost effectiveness of energy resources, including conservation and load management options, the commission shall include a value for any costs and benefits to the environment, including air quality. The commission shall ensure that any values it develops pursuant to this section are consistent with values developed by the State Energy Resources Conservation and Development Commission pursuant to Section 25000.1 of the Public Resources Code. However, if the commission determines that a value developed pursuant to this subdivision is not consistent with a value developed by the State Energy Resources Conservation and Development Commission pursuant to subdivision (c) of Section 25000.1 of the Public Resources Code, the commission may nonetheless use this value if, in the appropriate record of its proceedings, it states its reasons for using the value it has selected.

CHAPTER 1476

An act to amend Sections 94316.2, 94316.3, 94316.4, 94316.5, 94316.6, 94316.10, 94316.20, 94317, 94317.5, 94318.5, 94319.2, 94319.4, 94319.5, 94319.10, 94319.12, 94319.13, 94319.14, and 94319.18 of, and to add Sections 94316.05, and 94316.9 to, the Education Code, and to amend Section 69507.7 of the Education Code as amended by Section 1.5 of Chapter 1239 of the Statutes of 1989, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 69507.7 of the Education Code, as added by Section 1.5 of Chapter 1239 of the Statutes of 1989, is amended to read:

69507.7. (a) The Student Aid Commission shall give written notice to the Council for Private Postsecondary and Vocational Education when, in the administration of a program review pursuant to Section 69763, evidence is discovered indicating that a private postsecondary educational institution has failed to comply with Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59 or Section 94320.

(b) A private postsecondary educational institution that violates Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59 or Section 94320, shall be regarded as not legally authorized by the state to provide courses of instruction. The existence of a violation may be determined by the Student Aid Commission in connection with determining the institution's eligibility to participate in loan programs administered by the Student Aid Commission. The Student Aid Commission's determination of a violation may be contested by the institution in a hearing as provided in subdivision (c).

(c) In addition to notifying the Council for Private Postsecondary and Vocational Education pursuant to subdivision (a), the Student Aid Commission may limit, suspend, or terminate an institution's eligibility to participate in loan programs administered by the Student Aid Commission, based on the institution's violation of any of the provisions of Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59 or Section 94320. No action shall be brought by the Student Aid Commission for a de minimus violation of that article. Nothing herein shall be construed to authorize the Student Aid Commission to suspend or revoke an institution's approval to operate. An action instituted pursuant to this subdivision shall be subject to Article 11 (commencing with Section 30300) of Chapter 1 of Part IV of Title 5 of the California Code of Regulations and the requirements of federal law, including the requirements for notice and hearing.

(d) Any costs to the Student Aid Commission for the administration of this section shall be reimbursed by the council from the vocational education account in the Private Postsecondary and Vocational Education Administration Fund.

(e) This section supplements, but does not supplant, the rights, remedies, and penalties in other provisions of law.

(f) It is the intent of the Legislature that the priority for review by the Student Aid Commission for violations solely of Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59 or Section 94320 shall be focused on institutions which have a cumulative gross student loan default rate of at least 40 percent. Nothing herein shall preclude the Student Aid Commission from taking appropriate

action if any institution is in violation of Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59 or Section 94320.

SEC. 2. Section 94316.05 is added to the Education Code, to read:

94316.05. (a) The Legislature further finds and declares that students have been harmed by some institutions because of the financial improprieties and mismanagement of those institutions, their failure to fully disclose the student's financial and contractual obligations, and their failure to have sufficient resources to provide the promised training. The Legislature also finds that the tuition refund policies of institutions often encourage unfair practices by creating a financial benefit to the institution if a student drops out, and do not encourage institutions to provide adequate counseling or to adopt policies designed to curb student dropouts. In addition, the Legislature finds that many institutions have poor records of student completion and job placement, even though these institutions expressly or implicitly represent that students will receive sufficient training and skills to obtain well paid employment in the field that is the subject of the training, and that a reputable institution is one that complies with this chapter. Consequently, the Legislature finds that the business of providing occupational training, instruction, and related equipment by commercial enterprises has a substantial impact on the economy of this state and the welfare of its citizens.

(b) It is the further intent and purpose of this article to establish incentives to reduce student dropouts, minimum fiscal standards, minimum standards for admission based on the student's ability to be successfully trained, and minimum standards for institutional accountability for course completion and student employment in the occupations or job titles to which the training is represented to lead. The Legislature finds that the accountability standards for completion and employment reflect a reasonable tolerance for factors outside of an institution's control. It is also the intent and purpose of this article to assure that the cost to taxpayers of loans and grants for vocational instruction is commensurate with the benefits obtained by students and flowing to the state's economy.

SEC. 3. Section 94316.2 of the Education Code is amended to read:

94316.2. The following definitions and provisions apply to this article:

(a) "Class" means a subject, such as English or mathematics, that is taught as part of a course of instruction. "Class session" means the part of a day in which an institution conducts instruction or training in a particular class, such as an hour of instruction in English or mathematics offered on a particular day of the week.

(b) "Council" means, on and after January 1, 1991, the Council for Private Postsecondary and Vocational Education established pursuant to Section 94304. Until January 1, 1991, the word "council" means the Superintendent of Public Instruction with respect to the approval, authorization, licensure, regulation, or oversight of, or any other duty or function relating to, postsecondary educational

institutions.

(c) "Course" or "course of instruction," except as otherwise provided, means the program of instruction, training, or education represented to lead to an occupation or job title.

(d) "Educational service" means any education, training, or instruction offered by an institution, including any equipment.

(e) "Equipment" includes all textbooks, supplies, materials, implements, tools, machinery, computers, electronic devices, or any other goods related to any education, training, or instruction, or an agreement for educational services or a course of instruction.

(f) "Licensure" includes any license, certificate, permit, or similar credential which a person must hold to lawfully engage in any occupation or activity.

(g) "Owner" means any person who has a legal or equitable interest in 10 percent or more of an institution's stock or assets.

(h) "Person" means a natural person or any business entity, regardless of the form of organization.

(i) "Person in control" means a person who has sufficient capacity, directly or indirectly, to direct or influence the management, policies, or conduct of the institution so that the person can cause or prevent violations of this chapter. There is a rebuttable presumption affecting the burden of proof that an owner, director, or officer of an institution is a person in control.

(j) "Private postsecondary educational institution" or "institution" means any person doing business in California who offers to provide or provides, for a tuition, fee, or other charge, any instruction, training, or education primarily to people who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance. An "institution" includes its branch and satellite campuses, unless otherwise provided.

(k) "Representative" means an employee, an agent as defined in Section 2295 of the Civil Code, an agent subject to Section 94333, an agency subject to Section 94334, or any person who, for compensation, (1) solicits, promotes, advertises, or refers or recruits students or prospective students for an institution or (2) is involved with enrollment, admissions, student attendance, administration, financial aid, instruction, or job placement assistance on behalf of an institution.

(*l*) "Total charge" means the total charge for a course of instruction or other education, instruction, or training, including the charge for tuition, equipment, finance charges, and all other fees, charges, costs, and expenses.

(m) "Year" means a calendar year.

SEC. 4. Section 94316.3 of the Education Code is amended to read:

94316.3. (a) No institution or representative of an institution shall make any statement that is in any manner untrue or misleading, either by actual statement, omission, or intimation.

(b) No institution or representative of an institution shall engage in any false, deceptive, misleading, or unfair act in connection with any matter, including any of the following: the institution's advertising and promotion, the recruitment of students for enrollment in the institution, the offer or sale of a course of instruction, the enrollment or testing of students, the preparation or submission of a student's application for a student loan or grant, the financing of a course of instruction, course length, course credits, the withholding of equipment, educational materials, or loan or grant funds from a student, training and instruction, the collection of payments, or job placement.

(c) An institution is liable in any civil or administrative action or proceeding for any violation of this article committed by a representative of the institution. An institution is liable in a criminal action for violations of this article committed by a representative of the institution to the extent permitted by law.

(d) (1) No institution or representative of an institution shall induce a person to enter into an agreement for a course of instruction by offering to compensate that person to act as the institution's representative in the solicitation, referral, or recruitment of others for enrollment in the institution.

(2) No institution or representative of an institution shall offer to pay or pay any consideration to a student or prospective student to act as a representative of the institution with regard to the solicitation, referral, or recruitment of any person for enrollment in the institution either:

(A) During the 60-day period following the date on which the student began the course.

(B) At any subsequent time if the student has not maintained satisfactory academic progress in acquiring the necessary level of education, training, skill, and experience to obtain employment in the occupation or job title to which the course is represented to lead. The institution shall have the burden of proof to establish that the student has maintained satisfactory academic progress.

(e) No institution shall compensate a representative involved in recruitment, enrollment, admissions, student attendance, or sales of equipment to students on the basis of a commission, commission draw, bonus, quota, or other similar method except as follows:

(1) If the course of instruction is scheduled to be completed in 90 days or less, the institution shall pay compensation related to a particular student only if that student completes the course.

(2) If the course of instruction is scheduled to be completed in more than 90 days, the institution shall pay compensation related to a particular student as follows:

(A) No compensation shall be paid for at least 90 days after that student has begun the course.

(B) Up to one-half of the compensation may be paid before the student completes the course only if the student has made satisfactory academic progress, documented by the institution in the

student's file, for more than 90 days.

(C) The remainder of the compensation shall be paid only after the student's completion of the course.

This subdivision does not prevent the payment at any time of an hourly, weekly, monthly, or annual wage or salary.

(f) No institution or representative of an institution shall pay any consideration to a person to induce that person to sign an agreement for a course of instruction.

(g) No institution shall use a misleading name in any manner implying any of the following:

(1) The institution is affiliated with any governmental agency, public or private corporation, agency, or association.

(2) The institution is a public institution.

(3) The institution grants degrees.

(h) (1) No institution or any representative of an institution shall in any manner make any untrue or misleading change in, or untrue or misleading statement related to any test score, grade, record of grades, attendance record, record indicating student completion or employment, financial information, including any financial report required to be filed pursuant to Sections 94316.14 and 94316.22, information or record relating to the student's eligibility for financial assistance or attendance at the institution, or any other record or document required by this chapter or by the council.

(2) No institution or any representative of an institution shall falsify, destroy, or conceal any record or other item described in paragraph (1) while that record or item is required to be maintained by this chapter or by the council.

(i) No institution or representative of an institution shall use the terms "approval," "approved," "approval to operate," or "approved to operate," without stating clearly and conspicuously that approval to operate means compliance with minimum state standards and does not imply any endorsement or recommendation by the state or by the council. If the council has granted an institution approval to operate, the institution or its representative may indicate that the institution is "licensed" or "licensed to operate" but may not state or imply that the institution or its courses of instruction are endorsed or recommended by the state or by the council.

(j) No institution offering courses represented to lead to occupations or job titles requiring licensure shall enter into an agreement for a course of instruction with a person whom the institution knows or, by the exercise of reasonable care, should know, would be ineligible to obtain licensure in the occupation or job title to which the course of instruction is represented to lead, at the time of the scheduled date of course completion, for reasons such as age, physical characteristics, or relevant past criminal conviction.

(k) No institution shall divide or structure a course of instruction or educational service to avoid the application of any provision of this article.

(*l*) No institution or representative of an institution shall direct a

representative to perform any unlawful act, to refrain from complaining or reporting unlawful conduct to the council or another government agency, or to engage in any unfair act to persuade a student not to complain to the council or another government agency.

SEC. 5. Section 94316.4 of the Education Code is amended to read:

94316.4. (a) In addition to making any other required disclosures, a representative of an institution who in any manner solicits or recruits any person in-person at any place other than the institution's premises or by telephone for enrollment in a course of instruction shall disclose the following, orally and, if the solicitation is in-person, in a correctly dated written document given to the person and printed in at least 10-point type and signed by the representative:

(1) The representative is a paid recruiter for an institution and the institution is not a public school.

(2) The representative is not offering a job, making job referrals, or conducting a survey.

(3) There is no guarantee of a job after a student graduates from the course of instruction.

(4) The total charge for the course of instruction, or if the solicitation or recruitment is for more than one course, the range of the total charges for the courses offered.

(b) The representative shall make the disclosures required by paragraphs (1) to (3), inclusive, of subdivision (a) before attempting to solicit or recruit any person. The representative shall make the disclosure required by paragraph (4) of subdivision (a) before the end of a solicitation or attempt to recruit any person.

(c) A representative who solicits or recruits any person as described in subdivision (a) shall provide the person with a copy of the institution's current catalog or brochure, containing the information described in paragraph (4) of subdivision (a) of Section 94316.10, which the person may retain without charge. The institution or its representative shall provide the catalog or brochure required by this subdivision at the time of an in-person solicitation or recruitment or send the catalog or brochure within two days of a telephonic solicitation or recruitment.

(d) No institution shall enter an agreement for a course of instruction with, or prepare or assist in the preparation of a student loan or grant application for, a person solicited or recruited as described in subdivision (a) within three days of the date on which the person was solicited or recruited.

(e) This section does not apply to solicitations or presentations made at informational public appearances directed to five or more people or to advertisements in print or broadcast media.

SEC. 6. Section 94316.5 of the Education Code is amended to read:

94316.5. (a) Every institution shall meet all of the following

performance standards for each course offered during the applicable time period described in subdivision (k):

(1) Sixty percent or more of the students who began the course, did not cancel pursuant to Section 94317, and were originally scheduled at the time of enrollment to complete the course during that period, shall complete it.

(2) Seventy percent or more of the students who completed the course within that period shall obtain employment, starting within six months after completing the course, in the occupations or job titles to which the course of instruction was represented to lead. For the purpose of this subdivision, "course of instruction" or "course" includes all courses of instruction, however denominated, that are represented to lead to the same or closely related occupations or job titles.

(b) Every institution shall meet all of the following performance standards for all courses in the aggregate offered by the institution at each of its campuses during the applicable time period described in subdivision (k):

(1) Sixty percent or more of all the students who began the courses, did not cancel pursuant to Section 94317, and were originally scheduled at the time of enrollment to complete these courses during that time period, shall complete these courses.

(2) Seventy percent or more of all the students who completed the courses within that time period shall obtain employment, starting within six months after completing the courses, in the occupations or job titles to which the courses of instruction were represented to lead.

(c) An institution shall meet the standards prescribed in subdivisions (a) and (b) at each campus at which the course or courses are offered. A determination of whether a particular campus meets the standards prescribed in subdivision (a) and (b) shall be based only on students who attended that campus. An institution shall be subject to subdivisions (e) and (f) only with respect to its campuses which fail to meet the standards prescribed in subdivisions (a) and (b).

(d) (1) This subdivision applies only to institutions in which 15 or fewer students began a course or courses, did not cancel pursuant to Section 94317, and were originally scheduled to complete the course or courses within the applicable time period described in subdivision (k).

(2) If an institution described in paragraph (1) fails to meet any of the standards prescribed in subdivisions (a) or (b) but would have met that standard if one additional student had completed or obtained employment, the institution shall be deemed to comply with this section. If an institution described in paragraph (1) fails to meet the standard for review established in subdivision (e) but would have met the standard if one additional student had completed or obtained employment, the institution shall be deemed subject to subdivision (e).

(e) (1) This subdivision applies only to an institution or any of its campuses which fails to meet any of the following:

(A) Any of the standards established in subdivision (a) or (b) by 10 percent or less.

(B) Any of the standards established in subdivision (a) by more than 10 percent but has a placement rate of 42 percent or more for the course in which the standard was failed.

(C) Any of the standards established in subdivision (b) by more than 10 percent but has a placement rate of 42 percent or more for all courses in the aggregate.

(2) The council shall conduct a review of the campus failing the standard and of the course in which the standard was failed. The review may also include the institution. The review shall be conducted within 90 days after the council receives information that the institution or any of its campuses is not in compliance with any of the standards prescribed in subdivisions (a) and (b). The review may include an inspection of the institution's or campus' facilities and records, interviews of administrators, job placement personnel, faculty, and students, observation of classroom instruction, a review of student complaints, and any other matters deemed appropriate by the council. The council shall determine whether the institution's failure to satisfy the standards was in any manner caused by a violation of this chapter or whether a substantial number of students were unable to complete the course or obtain employment due to such factors as death, disability, pregnancy, illness, or military service.

(3) If the institution did not meet the standards prescribed in subdivision (a) in whole or in part because of any violation of this chapter, the council shall order that the institution cease offering the course of instruction at the campus where the course was offered. If the institution did not meet the standards prescribed in subdivision (b) in whole or in part because of any violation of this chapter, the council shall revoke the institution's approval to operate, or approval to operate the branch or satellite campus where the courses were offered. No action may be taken pursuant to this paragraph without notice and, if requested by the institution, a hearing.

(4) If the institution's failure to meet the standards prescribed in subdivision (a) or (b) was not caused by a violation of this chapter, the council shall order, after notice and, if requested, after a hearing, that the institution implement a program to achieve compliance with subdivisions (a) and (b). The program may include any of the following:

(A) Limitations on enrollment for specific courses of instruction.

(B) Revision of admission policies and screening practices to assure that students have a reasonable expectation of completing courses and obtaining employment.

(C) Increased academic counseling and other student support services.

(D) Improved curricula, facilities, and equipment.

(E) Revisions to the qualifications and number of faculty.

(F) Improved job placement services, including revisions to the qualifications and number of job placement personnel and the expansion of contacts with employers and state and federal employment development agencies.

(G) Any other reasonable procedure required by the council.

(5) If an institution is subject to an order pursuant to paragraph (4), the council may require that the institution file information or reports requested by the council. The council may also monitor the institution in the manner provided in paragraph (2) of subdivision (c) of Section 94319.10.

(6) (A) An institution subject to an order pursuant to paragraph (4) shall satisfy the standards established in subdivisions (a) and (b) within the period designated by the council. This period shall not extend more than (i) one year beyond the length of the course for noncompliance with the standards prescribed by subdivision (a) or (ii) one year beyond the longest course for noncompliance with the standards prescribed in subdivision (b).

(B) If the institution fails to satisfy the standards of subdivision (a) within the period designated by the council, the council shall order the institution to cease offering the course of instruction at the campus where that course was offered. If the institution fails to satisfy the standards of subdivision (b) within the period designated by the council, the council shall revoke the institution's approval to operate, or approval to operate the branch or satellite campus where the courses were offered. No action shall be taken pursuant to this paragraph without notice and, if requested by the institution, a hearing.

(f) If an institution fails to meet any of the standards established in subdivision (a) by more than 10 percent and does not have a placement rate of 42 percent or more for the course in which the standard was failed, the council shall order the institution to cease offering the course of instruction at the campus where the course was offered. If the institution fails to meet any of the standards prescribed in subdivision (b) by more than 10 percent and does not have a placement rate of 42 percent or more for all courses in the aggregate, the council shall revoke the institution's approval to operate, or approval to operate the branch or satellite campus where the courses were offered. No action shall be taken pursuant to this paragraph without notice and, if requested by the institution, a hearing.

(g) (1) The institution shall have the burden of proving its compliance with this section.

(2) The council shall investigate the institution whenever the council deems appropriate to verify the institution's compliance with this section. The investigation shall include an examination of the records maintained by the institution pursuant to subdivision (i) and contacts with the students and employers.

(3) If an institution willfully falsifies, alters, destroys, conceals, or provides untrue or misleading information relating to compliance

with this section, including records maintained pursuant to subdivision (i), the council shall revoke the institution's approval to operate. No action shall be taken pursuant to this paragraph without notice and, if requested by the institution, a hearing. This provision supplements but does not supplant any other penalty or remedy provided by law.

(4) The institution shall pay all reasonable costs and expenses incurred by the council in connection with this section at a time designated by the council.

(h) If the council, pursuant to subdivision (e) or (f), orders an institution to cease offering a course of instruction, or revokes the approval of an institution to operate or operate a branch or satellite campus, the institution may apply, no sooner than two years after the order to cease or revocation became effective, for approval to offer that course or for approval to operate. Before the council may grant any approval, the institution shall establish that it complies with this chapter, each course satisfies all of the minimum standards prescribed by this chapter, and the circumstances surrounding the institution's failure to meet the requirements of this section have sufficiently changed so that the institution will be substantially likely to comply with this section.

(i) An institution shall maintain records of the name, address, and telephone number of students who enroll in a course of instruction, including students who begin the course and students who cancel pursuant to Section 94317, and of students who graduate from that course of instruction. An institution shall inquire whether students who complete a course of instruction obtain employment starting within six months of completing the course in the occupation to which the course of instruction is represented to lead and continue in employment for a period of at least 60 days. The inquiry shall be documented by a list indicating each student's name, address, and telephone number; the employer's name, address, and telephone number; the name, address, and telephone number of the person who provided the information regarding the student's employment to the institution; the name, title, or description of the job; the date the student obtained employment; and the duration of the student's employment.

(j) For the purpose of this section:

(1) "Annual report" means the report required to be filed pursuant to Section 94316.14.

(2) "Employment" means full-time employment for at least 32 hours per week, or any other time designated by the council, for a period of at least 60 days in the occupations or job titles to which the course of instruction is represented to lead.

(3) "Placement rate" means the percentage of students who did both of the following:

(A) Began the course, did not cancel pursuant to Section 94317, and were originally scheduled at the time of enrollment to complete the course during the applicable time period described in

subdivision (k).

(B) Completed the course within the applicable time period described in subdivision (k) and started employment within six months of completing the course.

(4) "Reporting period" means the institution's fiscal year or any year-period designated by the council to be covered in the institution's annual report.

(k) (1) An institution's compliance with the standards prescribed in subdivisions (a) and (b) shall be determined as of the date on which the institution's reporting period ends.

(2) The institution shall report its determination of its compliance with the standards established in subdivisions (a) and (b) in its 1991 annual report and in each subsequent annual report.

(3) For determining compliance with the completion standards in paragraph (1) of subdivision (a) and paragraph (1) of subdivision (b) at the end of the institution's 1991 reporting period, "time period" means the period beginning on January 1, 1990, and ending at the end of the institution's 1991 reporting period.

(4) For determining compliance with the employment standards in paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) at the end of the institution's 1991 reporting period, "time period" means the period beginning on January 1, 1990, and ending eight months before the end of the institution's 1991 reporting period.

(5) For determining compliance with the completion standards in paragraph (1) of subdivision (a) and paragraph (1) of subdivision (b) at the end of the institution's 1992 reporting period, "time period" means the period beginning on January 1, 1990, and ending at the end of the institution's 1992 reporting period.

(6) For determining compliance with the employment standards in paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) at the end of the institution's 1992 reporting period, "time period" means the period beginning January 1, 1990, and ending eight months before the end of its reporting period.

(7) For determining compliance with the completion and employment standards in subdivisions (a) and (b) at the end of the institution's 1993 reporting period and at the end of each annual reporting period thereafter, "time period" means the two most recent calendar years that ended at least eight months before the end of the institution's applicable reporting period.

(8) The council may adjust the meaning of "time period" as specified in paragraphs (3) to (7), inclusive, if the council finds that an adjustment is necessary for the efficient administration of this section. If any adjustment is made, the adjustment shall not include students who began a course of instruction before January 1, 1990, or provide for a "time period" of less than one year in the 1991 and 1992 reporting periods. If any adjustment is made in the 1993 or subsequent annual reporting periods, the council may adjust when the "time period" commences but shall not alter the two-year length

of the period.

(*l*) If an order to cease offering a course or a revocation is issued pursuant to this section, the council may, in its discretion, permit the institution to continue to offer the course or courses of instruction to the students who had begun the course or courses before the effective date of the order or revocation or may order the institution to cease instruction and provide a refund of tuition and all other charges to students.

(m) This section shall become operative on January 1, 1991.

SEC. 7. Section 94316.6 of the Education Code is amended to read:

94316.6. (a) As a condition of maintaining its approval to operate, an institution shall maintain sufficient financial resources to do all of the following:

(1) Satisfy minimum standards prescribed by Section 94311 or 94311.1, whichever is applicable.

(2) Provide the education, training, skill, and experience the institution in any manner represented it would provide.

(3) Pay timely refunds as required by Sections 94317, 94318, 94318.5, 94319.4, and 94319.9.

(b) The council may find that an institution does not have sufficient financial resources to comply with subdivision (a) if any of the following occur:

(1) The institution fails to have available sufficient funds and accounts receivable to pay all operating expenses due within 30 days. For the purpose of this subdivision, "funds" means cash or assets which can be converted into cash within seven days.

(2) The institution fails to maintain a ratio of current assets to current liabilities of 1.25 to 1, as determined in accordance with this subdivision and, to the extent not provided in this subdivision, generally accepted accounting principles. For the purpose of this paragraph, "current assets" does not include any of the following: (A) intangible assets, including goodwill, going concern value, organization expense, startup costs, long-term prepayment of deferred charges, and nonreturnable deposits; or (B) state or federal grant funds that are not the property of the institution but are held for future disbursement for the benefit of students.

Unearned tuition shall be accounted for in accordance with generally accepted accounting principles.

(3) The institution's liabilities exceed its assets. "Assets" shall not include any item described in subparagraphs (A) and (B) of paragraph (2). "Liabilities" shall include unearned tuition.

(4) The institution has had operating losses, as determined under generally accepted accounting principles, in each of the institution's two most recent fiscal years.

(c) (1) In determining an institution's compliance with subdivision (a), the council may, at the institution's request, consider the financial resources of a parent corporation if the parent corporation files with the council, and at all times complies with, an

irrevocable and unconditional agreement approved by its board of directors that satisfies all of the requirements of paragraph (2).

(2) The agreement described in paragraph (1) shall provide that the parent corporation do all of the following:

(A) Consent to be sued in California.

(B) Consent to be subject to the administrative jurisdiction of the council and Student Aid Commission in connection with the institution's compliance with this chapter.

(C) Appoint an agent for service of process in California and all notices required by this chapter.

(D) Agree to pay any refund, claim, penalty, or judgment which the institution is obligated to pay.

(E) File financial reports, maintain financial records, and permit the inspection and copying of financial records to the same extent as is required of the institution.

(3) For the purpose of this subdivision, a "parent corporation" means a corporation that owns more than 80 percent of the stock of the institution whose financial resources are at issue.

(d) If an institution does not comply with subdivision (a), the council may do any or any combination of the following:

(1) Require the institution to establish and implement a financial plan to assure compliance with subdivision (a).

(2) Require the institution to post satisfactory security for the performance of its financial obligations pursuant to subdivision (a).

(3) Require the institution to furnish additional information, such as an audit report of financial statements prepared by a California licensed certified public accountant who is not an employee, officer, or director of the institution.

(4) Proceed pursuant to Section 94319.10.

(e) In any action or proceeding involving an institution's failure to comply with subdivision (a), there shall be a presumption affecting the burden of proof, which an institution may rebut, that the institution does not have sufficient financial resources to comply with subdivision (a) if the institution fails to meet any of the standards set forth in subdivision (b).

SEC. 8. Section 94316.9 is added to the Education Code, to read:

94316.9. The council may suspend or revoke an institution's approval to operate or order probation or the posting of a bond, as provided in Section 94319.10, for any of the following reasons:

(a) The institution has failed to make timely refunds to, or on behalf of students, as required by Sections 94317, 94318, 94318.5, 94319.4, and 94319.9, or has not satisfied, within 30 days of its issuance, a final judgment obtained by a student against the institution.

(b) The institution or an owner, person in control, director, or officer of the institution is, or has been, found in any criminal, civil, or administrative proceeding, after notice and an opportunity to be heard, to have violated any law regarding the obtaining, maintenance, or disbursement of state or federal loan or grant funds, or any other law substantially related to the operation of the

institution.

(c) The institution, or a person in control of the institution is, or has been, found in any criminal, civil, or administrative proceeding, after notice and an opportunity to be heard, to have unpaid financial liabilities involving the refund or unlawful acquisition, use, or expenditure of state or federal financial aid funds.

(d) (1) All of the following are, or have been, found in any criminal, civil, or administrative proceeding:

(A) A person in control of the institution was a person in control of another institution within one year before that institution's closure.

(B) While the person was acting as a person in control of the other institution, the person knew, or by the exercise of reasonable care, should have known that the institution violated this chapter.

(C) That violation was a cause of that institution's closure or of damage to students.

(D) That institution did not pay to all students refunds owed as a result of the closure and full compensation for actual damages from that violation.

(E) The person in control has not paid to all students of the closed institution refunds owed and full compensation for actual damages resulting from the closure that were not paid by the closed institution. For the purpose of this subdivision, "closure" includes closure of a branch or satellite campus, the termination of either the correspondence or residence portion of a home study or correspondence course, and the termination of a course of instruction for some or all of the students enrolled in the course before the time these students were originally scheduled to complete it or before a student who has been continuously enrolled in a course of instruction has been permitted to complete all the educational services and classes that comprise the course.

SEC. 9. Section 94316.10 of the Education Code is amended to read:

94316.10. (a) Before a person executes an agreement obligating that person to pay any money to an institution for a course of instruction or related equipment, the institution shall provide the person with all of the following:

(1) A copy of the agreement containing all of the information required by Section 94319.

(2) If the institution has offered the course of instruction for at least one calendar year, it shall provide orally and in writing all of the following information:

(A) The completion rate for students in the course of instruction for the most recent calendar year that ended not less than 18 months prior to the date of disclosure. This rate shall be calculated by determining the percentage of students enrolled in the course of instruction who were originally scheduled, at the time of enrollment, to complete the course of instruction in that calendar year that successfully completed the course of instruction, or obtained

full-time employment in the occupation or job title category for which the training was offered, within 150 percent of the amount of time normally required to complete the course of instruction.

(B) The job placement rate for students who were originally scheduled, at the time of enrollment, to complete the course of instruction in the most recent calendar year that ended not less than 18 months prior to the date of disclosure. In calculating this rate, the institution shall consider as not having obtained employment any graduate or other student for whom the institution does not possess evidence, documented in the student's file, showing that the graduate or other student has obtained employment in the occupation or job title category for which the course of instruction is offered.

(C) Any other information necessary to substantiate the truth of any claim made by the institution as to job placement.

(D) If the institution or a representative of the institution makes any express or implied claim about the salary which may be earned after completing a course of instruction, such as a claim that the student may be able to repay a student loan from the salary received at a job obtained following completion of the course of instruction, the following disclosures orally and in writing:

(i) The percentage of students who were originally scheduled, at the time of enrollment, to complete the course of instruction in the most recent calendar year that ended not less than six months prior to the date of disclosure who earn salaries at or above the claimed level.

(ii) The ranges of monthly salaries earned by these students in two hundred dollar ($200) increments and the number of these students in each salary range.

(E) If the institution or a representative of the institution in any manner represents that the course of instruction might lead to employment in an occupation or job title for which a state licensing examination is required, the following disclosures orally and in writing:

(i) All licensure or certification requirements established by the state for the occupation or job title category.

(ii) The pass rate of graduates of the course of instruction offered by that institution for the most recent calendar year that ended not less than six months prior to the date of disclosure on any licensure or certification examination required by the state for the particular occupation or job title.

(3) If the institution has offered the course of instruction for less than one calendar year, the following statement: "This course is new. We are not able to tell you how many students graduate, how many students find jobs, or how much money you can earn after finishing this course."

(4) A current catalog or brochure containing information describing the courses offered, all of the occupations or job titles, if any, to which the course of instruction is represented to lead, length

of program, faculty and their qualifications, schedule of tuition payments, fees, and all other charges and expenses necessary for completion of the course of instruction, cancellation and refund rights, the total cost of tuition over the entire period, a description of the student's rights under the Student Tuition Recovery Fund established pursuant to Section 94342, and all other material facts concerning the institution and the course of instruction that might reasonably affect the student's decision to enroll.

(5) If applicable, the following disclosures orally and in writing:

(A) If the student obtains a loan to pay for the course of instruction, the student will have the responsibility to repay the full amount of the loan plus interest, less the amount of any refund.

(B) If the student is eligible for a loan guaranteed or reinsured by the state or federal government and the student defaults on the loan:

(i) The federal or state government or the loan guarantee agency can take action against the student, including applying any income tax refund to which the person is entitled to reduce the balance owed on the loan.

(ii) The student may not be eligible for any other federal financial assistance for education at a different school or for government housing assistance until the loan is repaid.

(C) The institution is not a public institution.

(D) The institution has filed, or has had filed against it, a petition in bankruptcy.

(6) A written statement set forth in a table of the amount of the refund to which the student would be entitled if the student withdrew from the course after completing a period of days or weeks of instruction equivalent to 10 percent, 25 percent, 50 percent, 60 percent, and 75 percent of the course of instruction. The disclosures required by this paragraph may be set forth in the agreement for the course.

(b) The information required by paragraph (2) of subdivision (a) shall be documented by the institution with all facts needed to substantiate that information. Any information regarding a student's employment shall be based on an inquiry by the institution and shall be documented by a list indicating the student's name, address, and telephone number; the employer's name, address, and telephone number; the name and address or telephone number of the person who provided the information regarding the student's employment to the institution; the name, title, or description of the job; the date the student obtained the job; the duration of the student's employment; and the amount of the salary, if any salary claim has been made.

(c) No institution which has offered a course of instruction for less than one year shall make any express or implied claims about the salary that a student may earn after completing the course of instruction.

(d) The institution shall provide the catalog or brochure described in paragraph (4) of subdivision (a) to any person upon

request.

(e) The written disclosure of information required by subparagraphs (A), (B), and (E) of paragraph (2) of subdivision (a) may be made on the form prescribed in Appendix A, Form I, in 34 Code of Federal Regulations, Part 668, or any other similar form prescribed by law for the disclosure of that information.

(f) No institution shall obtain the signature of any person to an agreement obligating that person to pay any money to the institution until the person has had a reasonable opportunity to read and review all of the items described in subdivision (a).

(g) For the purpose of subdivision (a), a student is "originally scheduled, at the time of enrollment, to complete the course of instruction" on the date when the student will have been enrolled in the course of instruction for the amount of time normally required to complete the course of instruction. The "amount of time normally required to complete the course of instruction" is the period of time specified in the institution's enrollment contract, catalog, or other materials for completion of the course of instruction by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application (if any), whichever is less. However, the "amount of time normally required to complete the program" shall be calculated on a pro rata basis for students enrolled on a less than full-time basis.

(h) The disclosure of any information pursuant to Section 94316.4 shall not relieve any institution of any obligation to make any disclosure required under this section.

(i) Notwithstanding any provision of this section, an institution offering a home study or correspondence course need not orally make the disclosures required by this section in connection with that course if the institution did not orally solicit or recruit the student for enrollment and the student enrolled by mail.

SEC. 10. Section 94316.20 of the Education Code is amended to read:

94316.20. (a) When a person executes an agreement obligating that person to pay any money to an institution for a course of instruction or related equipment, the institution shall provide the person with a document containing only the following notice:

"NOTICE OF STUDENT RIGHTS (12-point bold type)

"1. You may cancel your contract for school, without any penalty or obligation on the fifth business day following your first class session as described in the Notice of Cancellation form that will be given to you at (insert 'the first class you go to' or 'with the first lesson in a home study or correspondence course,' whichever is applicable). A different cancellation policy applies for home study or correspondence courses."

Read the Notice of Cancellation form for an explanation of your cancellation rights and responsiblities. If you have lost your Notice

of Cancellation form, ask the school for a sample copy.

"2. After the end of the cancellation period, you also have the right to stop school at any time, and you have the right to receive a refund for the part of the course not taken. Your refund rights are described in the contract. If you have lost your contract, ask the school for a description of the refund policy."

"3. If the school closes before you graduate, you may be entitled to a refund. Contact the

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(insert Council for Private Postsecondary and Vocational Education or the Superintendent of Public Instruction, whichever applies)"

at the address and telephone number printed below for information.

"4. If you have any complaints, questions, or problems which you cannot work out with the school, write or call:

(insert name, address, and telephone number of the Council for Private Postsecondary and Vocational Education or of the Superintendent of Public Instruction, whichever applies)"

(b) Except as otherwise provided in subdivision (a), the notice required by subdivision (a) shall be printed in 10-point type in English and, if any solicitation or negotiation leading to the agreement for a course of instruction was in a language other than English, in that other language.

(c) A copy of the notice, in each language in which the notice was printed pursuant to subdivision (b), shall be posted at all times in a conspicuous place at the main entrance of the institution, in each admissions office, and in each room used for instruction. The council may prescribe the size and format of the posted notice. This subdivision does not apply to an institution that exclusively offers correspondence or home study courses.

(d) Upon request, the institution shall provide a student with a copy of a Notice of Cancellation form, a written description of the student's refund rights, a copy of the contract executed by the student, a copy of documents relating to loans or grants for the student, and a copy of any document executed by the student.

(e) The council may provide for the inclusion of additional information in the notice set forth in subdivision (a).

SEC. 11. Section 94317 of the Education Code is amended to read:

94317. (a) In addition to any other right of rescission, the student shall have the right to cancel an agreement for a course of instruction including any equipment, until midnight of the fifth business day after the day on which the student (1) attended the first class of the course of instruction which is the subject of the agreement or received the first lesson in a home study or correspondence course, (2) received a copy of the notice of cancellation as provided in Section 94317.5, or (3) received a copy of the agreement and the disclosures as required by subdivision (a) of Section 94316.10, whichever is later. If the first lesson in a home study or

correspondence course is sent to the student by mail, the institution shall send it by first-class mail, postage prepaid, documented by a certificate of mailing, and the student shall have a right to cancel until midnight of the eighth business day after the first lesson was mailed.

(b) Cancellation shall occur when the student gives written notice of cancellation to the institution at the address specified in the agreement.

(c) The written notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) The written notice of cancellation need not take a particular form and, however expressed, is effective if it indicates the student's desire not to be bound by the agreement.

(e) Except as provided in subdivision (f), if the student cancels the agreement, the student shall have no liability, and the institution shall refund any consideration paid by the student within 10 days after the institution receives notice of the cancellation.

(f) If the institution gave the student any equipment, the student shall return the equipment within 10 days following the date of the Notice of Cancellation. If the student fails to return the equipment within this 10-day period, the institution may retain that portion of the consideration paid by the student equal to the documented cost to the institution of the equipment and shall refund the portion of the consideration exceeding the documented cost to the institution of the equipment within 10 days after the period within which the student is required to return the equipment. The student may retain the equipment without further obligation to pay for it.

(g) For the purpose of determining the time within which a student may cancel that student's agreement for a course, as described in Sections 94316.20, 94317, and 94317.5, "business day" means the following:

(1) Except as provided in paragraph (2), a day on which that student is scheduled to attend a class session.

(2) For home study or correspondence courses, any calendar day except Saturday, Sunday, or any holiday enumerated in Section 6700 of the Government Code.

SEC. 12. Section 94317.5 of the Education Code is amended to read:

94317.5. (a) The institution shall provide the student with two cancellation forms at the first class attended by the student or with the first lesson in a home study course submitted by the student. The form shall be completed in duplicate, captioned "Notice of Cancellation," and shall contain the following statement:

"Notice of Cancellation

_____
(Date)
[Enter date of first class, date first lesson received, or date first lesson was mailed, whichever is applicable]

"You may cancel this contract for school, without any penalty or obligation by the date stated below."

"If you cancel, any payment you have made and any negotiable instrument signed by you shall be returned to you within 10 days following the school's receipt of your cancellation notice.

"But, if the school gave you any equipment, you must return the equipment within 10 days of the date you signed a cancellation notice. If you do not return the equipment within this 10-day period, the school may keep an amount out of what you paid that equals the cost of the equipment. The school is required to refund any amount over that as provided above, and you may keep the equipment.

"To cancel the contract for school, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

_____, at _____.
(name of institution) (address of institution)

"NOT LATER THAN _____
[Enter midnight of the date that is the fifth business day following the day of the first class or the day the first lesson was received or, if the lesson was sent by mail, the eighth business day following the day of mailing, whichever is applicable]

"I cancel the contract for school.

_____
(Date)

_____
(Student's signature)

"REMEMBER, YOU MUST CANCEL IN WRITING. You do not have the right to cancel by just telephoning the school or by not coming to class.

"If you have any complaints, questions, or problems which you cannot work out with the school, write or call:

(insert name, address, and telephone number of the Council for Private Postsecondary and Vocational Education or the Superintendent of Public Instruction, whichever applies)"

SEC. 13. Section 94318.5 of the Education Code is amended to read:

94318.5. (a) (1) Except as provided in paragraph (2), the refund shall be the amount the student paid for instruction multiplied by a fraction, the numerator of which is the number of hours of instruction which the student has not received but for which the student has paid, and the denominator of which is the total number of hours of instruction for which the student has paid.

The refund amount shall be adjusted as provided in subdivision (b) or (c) for equipment, if applicable.

(2) For an educational service offered by home study or correspondence, the refund shall be the amount the student paid for lessons multiplied by a fraction, the numerator of which is the number of lessons for which the student has paid but which the student has not completed and submitted, and the denominator of which is the total number of lessons for which the student has paid. The refund amount shall be adjusted as provided in subdivision (b) or (c) for equipment and as provided in subdivision (d) for resident instruction, if applicable.

(3) Notwithstanding any provision in any agreement, (A) all amounts which the student has paid, however denominated, shall be deemed to have been paid for instruction, unless the student has paid a specific charge for equipment set forth in the agreement for the course of instruction, (B) in the case of an educational service offered by home study or correspondence, all amounts which the student has paid, however denominated, shall be deemed to have been paid for lessons unless the student has paid a specific charge for equipment or resident instruction set forth in the agreement for the educational service, (C) the total number of hours necessary to complete each lesson of home study or correspondence instruction shall be substantially equivalent to each other lesson unless otherwise permitted by the council, and (D) an equal charge shall be deemed to have been made for each hour of instruction or each lesson.

(b) If the institution specifies in the agreement a separate charge for equipment which the student actually obtains and the student returns that equipment in good condition, allowing for reasonable wear and tear, within 10 days following the date of the student's withdrawal, the institution shall refund the charge for the equipment paid by the student. If the student fails to return that equipment in good condition, allowing for reasonable wear and tear, within 10 days following the date of the student's withdrawal, the institution may offset against the refund calculated under subdivision (a) the

documented cost to the institution of that equipment. The student shall be liable for the amount, if any, by which the documented cost for equipment exceeds the refund amount calculated under subdivision (a). For the purpose of this subdivision, equipment cannot be returned in good condition if the equipment cannot be reused because of clearly recognized health and sanitary reasons and this fact is clearly and conspicuously disclosed in the agreement.

(c) If the institution specifies in the agreement a separate charge for equipment which the student has not obtained at the time of the student's withdrawal, the refund shall also include the amount paid by the student that is allocable to that equipment.

(d) If an agreement for educational service offered by home study or correspondence includes a separate charge for resident instruction which the student has not begun at the time of the student's withdrawal, the institution shall refund the charge for the resident instruction paid by the student. If the student withdraws from the educational service after beginning the resident instruction, the institution shall pay a refund equal to the amount the student paid for the resident instruction multiplied by a fraction, the numerator of which is the number of hours of resident instruction which the student has not received but for which the student has paid, and the denominator of which is the total number of hours of resident instruction for which the student has paid.

(e) For the purpose of determining a refund under this section, a student shall be deemed to have withdrawn from a course of instruction when any of the following occur:

(1) The student notifies the institution of the student's withdrawal or of the date of the student's withdrawal, whichever is later.

(2) The institution terminates the student's enrollment as provided in the agreement.

(3) The student has failed to attend classes for a three-week period. For the purpose of of subdivision (a) of Section 94318 and for determining the amount of the refund, the date of the student's withdrawal shall be deemed the last date of recorded attendance. For the purpose of determining when the refund must be paid pursuant to subdivision (b) of Section 94318, the student shall be deemed to have withdrawn at the end of the three-week period.

(4) The student has failed to submit three consecutive lessons or has failed to submit a completed lesson within 60 days of its due date as set by an educational service offered by home study or correspondence. For the purpose of this paragraph, the date of the student's withdrawal shall be deemed to be the date on which the student submitted the last completed lesson.

(f) An institution shall have the burden of proof to establish the validity of the amount of every refund. The institution shall maintain records for five years of all the evidence on which the institution relies.

SEC. 14. Section 94319.2 of the Education Code is amended to read:

94319.2. (a) An institution shall not enter into an agreement for a course of instruction with a student unless the institution first administers to the student and the student passes a test as provided in subdivision (b).

(b) (1) The test required by subdivision (a) shall be a standardized test that is designed to measure and that reliably and validly measures the student's ability to be successfully trained to perform the tasks associated with the occupations or job titles to which the course of instruction is represented to lead. The student's performance on the test must demonstrate that ability.

(2) Nothing in paragraph (1) precludes an institution from using additional tests to determine a student's ability to be trained to perform tasks associated with the occupations and job titles for which training is offered as described in paragraph (1).

(3) (A) If no standardized test is available that satisfies paragraph (1), the institution shall use other appropriate tests to determine the student's ability to be trained to perform the tasks associated with the occupations and job titles for which training is offered as described in paragraph (1). Within 30 days of determining that no standardized test satisfies paragraph (1), the institution shall so inform the council and shall describe and, if possible, furnish the council with the test to be used in lieu of the test required by paragraph (1).

(B) Upon reasonable notice to the institution, the council may order the institution to demonstrate to the reasonable satisfaction of the council that the test and passing score are an appropriate measure of the student's ability to be trained to perform the tasks associated with the occupations or job titles to which the course is represented to lead. If the test is not an appropriate measure, the council shall, after notice, and if requested, a hearing, order that the institution cease administering the test.

(c) The institution shall have the burden of proof that the test complies with subdivision (b). If no minimum passing score is established by the test developer or if the minimum passing score used by the institution is below the minimum passing score established by the test's developer, the institution shall have the burden of proof that the student's achievement of the minimum passing score reasonably measures the student's ability to be successfully trained to perform the tasks associated with the occupations and job titles to which the course of instruction is represented to lead. The test shall be administered in accordance with the test's instructions, rules, and time limits.

(d) (1) The test shall be completed solely by the student.

(2) No institution or any person in any manner associated with the institution shall (A) answer any of the test questions, (B) read any of the test questions to the student, or (C) provide any assistance whatsoever to the student in answering test questions. Nothing in this paragraph prevents an institution from providing nonsubstantive assistance to accommodate the disability of a handicapped person otherwise qualified to take the test.

(3) The test shall be given by the institution at its premises or by an independent testing service. The site requirement does not apply to an institution offering a home study or correspondence course.

(4) If a prospective student has failed a test, the institution or the testing service that administered the test shall not administer another test to that prospective student for at least the period specified by the test developer or one week, whichever is longer. Any subsequent test administered by an institution to the same prospective student shall be a substantially different form of the same test or a substantially different test than the preceding test and shall satisfy the requirements of paragraph (1) or, if applicable, paragraph (3) of subdivision (b).

(f) An institution's application for approval to operate shall (1) identify the test used to comply with this section, (2) state the minimum score, if any, which the test's developer indicates a prospective student must achieve to demonstrate an ability to be successfully trained to perform the tasks associated with the occupations or job titles to which the course is represented to lead, (3) state the minimum passing score used by the institution, and (4) if the institution accepts a lower minimum passing score than is indicated by the test's developer, state an explanation of why the institution accepts a lower minimum passing score.

(g) The institution shall, for five years, retain an exemplar of each test administered by the institution pursuant to this section, an exemplar of the answer sheet for each test, a record of the passing score for each test, and the answer sheets or other responses submitted by each person who took each test.

SEC. 15. Section 94319.4 of the Education Code is amended to read:

94319.4. (a) If a course of instruction is based on a sequence of classes, class sessions, or lessons and the learning experience to be derived from any class, class sessions, or lesson within the sequence is based in any manner on a student's attendance at or completion of a prior class, class session, or lesson, an institution shall not enroll a student in that course of instruction unless the instruction begins with the first class, class session, or lesson and proceeds in the appropriate sequence.

(b) (1) If a course of instruction is based on a series of modules comprised of class sessions or lessons and the learning experience to be derived from any module is based in a manner on a student's attendance at or completion of any class sessions or lessons in any other module, an institution shall not enroll a student in that course of instruction unless the student begins and proceeds in the appropriate sequence.

(2) If a course of instruction is based on a series of modules comprised of class sessions or lessons and the learning experience to be derived from any module is not based on a student's attendance at or completion of any classes or lessons in any other module, an institution shall only enroll a student in the course of instruction if

the student begins with the first class session or lesson in a module.

(c) Notwithstanding subdivisions (a) and (b), if a class or a module consists of more than 60 days of instruction, the institution may enroll a student to begin no later than the fifth class session of the first class or the fifth class session in the appropriate module.

(d) The council, at any time, may determine whether the learning experience to be derived from any class session or lesson in a sequence of class sessions or lessons or from any module is based in any manner on a student's attendance at, or completion of, a prior class session or lesson in the sequence or any class sessions or lessons in any other module. The council may make the determination described in this subdivision upon the application of any person or when the council deems that a determination is appropriate. The institution shall have the burden to establish compliance with this section.

(e) The institution shall not merge classes unless all of the students have received the same amount of instruction and training. This subdivision does not prevent the placement of students, who are enrolled in different courses of instruction, in the same class if that class is part of each of the courses and the placement in a merged class will not impair the students' learning of the subject matter of the class.

(f) After a student has enrolled in a course of instruction, the institution shall not do any of the following:

(1) Make any unscheduled suspension of any class unless caused by circumstances completely beyond the institution's control.

(2) Change the day or time in which any class is offered to a day when the student is not scheduled to attend the institution or to a time that is outside of the range of time that the student is scheduled to attend the institution on the day for which the change is proposed unless at least 90 percent of the students who are enrolled consent to the change and the institution offers full refunds to the students who do not consent to the change. For the purpose of this paragraph, "range of time" means the period beginning with the time at which the student's first scheduled class session for the day is set to start and ending with the time the student's last scheduled class session for that day is set to finish.

(g) If an institution enrolls a student in a course of instruction that is not offered or designed as a home study or correspondence course at the time of enrollment, the institution shall not convert the course of instruction from classroom instruction to a home study or correspondence course.

(h) An institution shall not move the class instruction to a location more than five miles from the location of instruction at the time of enrollment unless any of the following occur:

(1) The institution discloses orally and clearly and conspicuously in writing to each student before enrollment in the course that the location of instruction will change after the course begins and the address of the proposed location.

(2) The institution applies for, and the council grants, approval to change the location. The council shall grant the application within 30 days if the council, after notice to affected students and an opportunity for them to be heard as prescribed by the council, concludes that the change in location would not be unfair or unduly burdensome to students. The council may grant permission which shall be subject to reasonable conditions, such as requiring the institution to provide transportation, transportation costs, or refunds to adversely affected students.

(3) The institution offers a full refund to students enrolled in the course of instruction who do not voluntarily consent to the change.

SEC. 16. Section 94319.5 of the Education Code is amended to read:

94319.5. (a) Every institution shall maintain for a period of not less than five years at its principal place of business in California accurate records that show all of the following:

(1) The names, telephone numbers, and home and local addresses of each student.

(2) The courses of instruction offered by the institution and the curriculum for each course.

(3) The name, address, and educational qualifications of each member of its faculty.

(4) The information required by subdivision (i) of Section 94316.5 and subdivision (b) of Section 94316.10.

(5) All information and records required by this chapter or required by the council.

(b) All records that an institution is required to maintain by this chapter or that relate to the institution's compliance with this chapter shall be made immediately available by the institution for inspection and copying during normal business hours by the council, the Attorney General, any district attorney or city attorney, and the Student Aid Commission.

(c) An institution shall make available to a student, or a person designated by the student, all of the student's records, except for transcripts of grades where the student is in default on one or more loans as provided by law.

(d) Each institution shall be deemed to have authorized the accrediting agency which accredited the institution to provide to the superintendent, the Attorney General, any district attorney or city attorney, or the Student Aid Commission, within 30 days of written notice, copies of all documents and other material concerning the institution that is maintained by the accrediting agency.

(e) Within 30 days of receiving written notice from the superintendent, the Attorney General, any district attorney or city attorney, or the Student Aid Commission, an accrediting agency shall provide the requesting official with all documents or other material concerning an institution accredited by that accrediting agency that are designated specifically or by category in the written notice.

(f) If the superintendent, the Attorney General, any district

attorney or city attorney, or the Student Aid Commission is conducting a confidential investigation of an institution and so informs the accrediting agency, the accrediting agency shall not inform that institution of the investigation.

(g) If an accrediting agency willfully fails to comply with this section, the accrediting agency shall be liable for a civil penalty of not less than two thousand five hundred dollars ($2,500) nor more than twenty-five thousand dollars ($25,000) for each violation. Penalties awarded pursuant to this section shall be deposited in the Private Postsecondary Education Administration Fund or any successor fund.

SEC. 17. Section 94319.10 of the Education Code is amended to read:

94319.10. (a) An institution is legally authorized to provide courses of instruction if the institution complies with both this article and Sections 94320 and 94321, or Section 94320 as that section is in effect on January 1, 1991, has received approval from the council, and has not been found to be in violation of this article by the council, the Student Aid Commission, or a court. No institution shall offer any course of instruction if the institution's approval to offer that course of instruction has been suspended or revoked.

(b) (1) The council, after notice and, if requested by the institution, a hearing, may suspend or revoke an institution's approval to operate or approval to operate a branch or satellite campus or may order that an institution cease offering a class or course of instruction because of any violation of this article, Sections 94320 and 94321, or Section 94320 as that section is in effect on January 1, 1991, or any regulation or order issued pursuant to this article.

(2) If the council takes any of the actions described in paragraph (1), the council, in its discretion, may permit the institution to continue to offer the class or course of instruction to students already enrolled or may order the institution to cease instruction and provide a refund of tuition and all other charges to students.

(c) (1) If the council determines after notice and, if requested by the institution, a hearing, that an institution has violated this article or Sections 94320 and 94321 or Section 94320, as that section is in effect on January 1, 1991, but that the institution's approval to operate, or approval to operate a branch or satellite campus should not be suspended or revoked, or that the institution should not be ordered to cease offering a class or course of instruction, the council may do any or all of the following: place the institution, or branch or satellite campus, on probation under reasonable terms and conditions for a specified period of time not to exceed two years, order that the institution post a bond, or order the institution not to enter into new agreements for courses of instruction.

(2) During the period of probation, the institution, or the branch or satellite or both the institution and the branch or satellite campus, shall be subject to monitoring that may include the required

submission of periodic reports, as prescribed by the council, and special onsite inspections to determine progress toward compliance. The onsite inspections may include an inspection of the institution's facilities and records, interviews of administrators, faculty, and students, and observation of class instruction. The council shall order the institution to reimburse all reasonable costs and expenses incurrerd by the council in connection with this paragraph. The council may make the payment of the order for reimbursement a condition of probation.

(3) If, as of the end of the period of probation, the council is not satisfied with the steps taken by the institution to eliminate the violations of this article or Sections 94320 and 94321, or Section 94320 as that section is in effect on January 1, 1991, upon which the probation was based, the council may revoke the institution's approval to operate or the institution's approval to operate a branch or satellite campus.

(4) The council may assess a penalty of up to ten thousand dollars ($10,000) as part of a probation order for violations of this article or Sections 94320 and 94321 in effect on January 1, 1991. In determining the amount of that penalty, the council shall consider the number and gravity of the violations, the degree of the institution's good faith or culpability, the history of the institution's previous violations, and the institution's ability to pay. If the institution fails to pay a penalty within the time prescribed by the council the institution's approval to operate all be automatically suspended until the penalty is paid in full.

(5) (A) Any bond ordered by the council shall be issued by an admitted surety insurer in an amount established at the discretion of the council that is sufficient to protect students from the potential consequences of the violation.

(B) The bond shall be in favor of the State of California for the indemnification of any person for any loss, including the loss of prepaid tuition, suffered as a result of the occurrence of any violation of this chapter during the period of coverage.

(C) Liability on the bond may be enforced after a hearing before the council, after 30 days' advance written notice to the principal and surety. The council shall adopt regulations establishing the procedure for administrative enforcement of liability. This paragraph supplements, but does not supplant, any other rights or remedies to enforce liability on the bond.

(D) The council may order the institution to file reports at any interval the council deems necessary to enable the council to monitor the adequacy of the bond coverage and to determine whether further action is appropriate.

(d) The council shall determine an institution's compliance, including the compliance of its branch and satellite campuses, with this article and Sections 94320 and 94321, or Section 94320 as that section is in effect on January 1, 1991, and shall not be bound by the findings or conclusions of any accrediting agency.

(e) The council may revoke the approval to operate of any institution which fails to pay an order imposing a penalty or an order for the reimbursement of costs and expenses. The council may enforce any administrative order requiring the payment of money in the same manner as if it were a money judgement pursuant to Title 9 (commencing with Section 680.010) of Part 1 of the Code of Civil Procedure. All penalties and reimbursements paid pursuant to this section shall be deposited in the vocational education account in the Private Postsecondary Education Administration Fund established pursuant to Section 94331.

(f) Proceedings by the council under this section shall be conducted in accordance with regulations adopted by the council or, if there are no regulations establishing hearing procedures, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the council shall have all of the powers granted therein.

(g) The council may bring an action for equitable relief for any violation of this article in addition to, or instead of, any other remedy or procedure.

SEC. 18. Section 94319.12 of the Education Code is amended to read:

94319.12. (a) If an institution has violated this article and immediate action is necessary to protect students, prevent misrepresentations to the public, or prevent the loss of public funds, tuition, or other money paid by students, the council may institute an emergency action to suspend the approval of an institution to operate, or the approval to operate a branch or satellite campus, for not more than 30 days unless the council initiates a proceeding to suspend or revoke the approval to operate within that period.

(b) (1) The council shall provide notice of the emergency action to the institution by certified mail, if the effective date of the emergency action is 10 or more days after mailing, or personal service, if the effective date of the emergency action if five or more days after service.

(2) The notice shall specify all of the following:

(A) The violations on which the emergency action is based.

(B) The nature and grounds of the emergency action, including whether the action applies to the continuation of instruction to enrolled students or to the enrollment of new students.

(C) The effective date of the action, which shall not be less than five days after the notice is provided.

(D) The institution's right to show cause that the emergency action is unwarranted by submitting to the council, at least two days before the effective date of the emergency action, declarations, documentary evidence, and written arguments demonstrating that the violations did not occur or that immediate action is not required.

(E) The right of the institution to request, in writing, within 30 days of the service of the notice, a hearing.

(c) The council may (1) continue the effective date of an

emergency action or (2) terminate the emergency action at any time if the council concludes that the institution has shown cause that the emergency action is unwarranted or that the grounds for instituting the emergency action no longer remain. The council shall provide written notice of a continuance or termination of an emergency action to the institution.

(d) (1) If the institution does not take the opportunity to show cause why the emergency action is unwarranted, the emergency action shall become effective on the date specified in the notice or notice of continuance.

(2) If the institution takes the opportunity to show cause and the council decides, after a consideration of the declarations, documentary evidence and written argument submitted by the institution, that the emergency action should become effective, the emergency action shall be effective on the date specified in the notice or notice of continuance. The council shall notify the institution of the decision at least one day before the effective date, and the institution may thereafter seek judicial relief upon notice to the council and the Attorney General.

(e) (1) If a hearing is requested within the 30-day period specified in subdivision (b), the council shall set a date for the hearing within 20 days after receipt of the request.

(2) If the institution does not request a hearing within the 30-day period specified in subdivision (b) or if the council concludes after a hearing requested by the institution that grounds exist for the suspension or revocation of the institution's approval to operate or approval to operate a branch or satellite campus, the council may extend the suspension or revoke the institution's approval to operate or approval to operate a branch or satellite campus, may order probation and a penalty, may order the posting of a bond, or may condition the institution's approval to operate or approval to operate a branch or satellite campus as the council deems appropriate.

(f) During the pendency of an emergency action, the council may investigate the institution's compliance with this article, including an onsite inspection, and may institute a proceeding pursuant to Section 94319.10 to suspend or revoke an institution's approval to operate or approval to operate a branch or satellite campus, order a bond, or order probation and a penalty, based on any violation of this article.

(g) This section supplements, but does not supplant, authority of the council to seek judicial relief, including a temporary restraining order and injunction, to redress any violation of this article.

SEC. 19. Section 94319.13 of the Education Code is amended to read:

94319.13. This article, except for Sections 94319.2 and 94319.4, applies to schools that offer instruction in how to prepare for, take, and pass civil service examinations or other tests qualifying a student for employment by a governmental entity. For the purpose of determining compliance with this article, schools described in this section shall be considered "institutions."

SEC. 20. Section 94319.14 of the Education Code is amended to read:

94319.14. (a) For the purposes of this section, the following definitions apply:

(1) "Document or record" means any of the following: any test score, grade, record of grades, attendance record, record indicating student course completion or employment, financial information, including any financial report required to be filed pursuant to Sections 94316.14 and 94316.22, information or records relating to the student's eligibility for financial assistance or attendance at the institution, or any other record or document required by this chapter or by the council.

(2) "Person" means a natural person and any business entity, regardless of the form of organization.

(b) A person who, in any manner, makes or causes to be made any untrue or misleading statement in connection with offering or providing a course of instruction or makes or causes to be made any untrue or misleading change in any document or record and who knows or, by the exercise of reasonable care, should know that the statement or change is untrue or misleading is guilty of a crime punishable as provided in subdivision (e).

(c) A person who willfully falsifies, destroys, fails to maintain, or conceals any document or record which is required to be maintained by this chapter or by the council is guilty of a crime punishable as provided in subdivision (e).

(d) A person who is required to file any report required by paragraph (5) of subdivision (e) of Section 94316.5, or Section 94316.14 or 94316.22 and willfully fails to file that report as required, or willfully violates or causes the violation of subdivision (b) of Section 94319.5, is guilty of a crime and is subject to punishment for each violation as provided in paragraph (2) of subdivision (e).

(e) Any person who violates subdivision (b) or (c), or who willfully violates Section 94316.4, 94320 or 94321, or Section 94320 as that section is in effect January 1, 1991, is guilty of a crime and is subject to separate punishment for each violation either by:

(1) Imprisonment in the state prison, by a fine not exceeding fifty thousand dollars ($50,000), or by both the fine and imprisonment.

(2) Imprisonment in the county jail for not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(f) Notwithstanding any other law, any prosecution under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the prosecution.

(g) The penalties provided by this section supplement, but do not supplant, the remedies and penalties provided under other law.

SEC. 21. Section 94319.18 of the Education Code is amended to read:

94319.18. Unless otherwise expressly declared if any provision of this article or the application thereof to any person or circumstances

is held invalid, that invalidity shall not affect other provisions or applications of the article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable. Each section of this article is complete within itself. If any section is held invalid and the Legislature would have foreseen the holding of invalidity, the Legislature nevertheless would have enacted each of the other sections of this article unless the Legislature has expressly declared its intent to the contrary.

SEC. 22. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This act enacts provisions critically necessary to reform statutes and procedures relating to the quality of education provided by private postsecondary institutions. In order that these vital changes take effect at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 1477

An act to amend Sections 35000 and 35101 of the Elections Code, relating to redistricting.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 35000 of the Elections Code is amended to read:

35000. Following each decennial federal census, and using that census as a basis, the board shall adjust the boundaries of any or all of the supervisorial districts of the county so that the districts shall be as nearly equal in population as may be and shall comply with the applicable provisions of Section 1973 of Title 42 of the United States Code, as amended. In establishing the boundaries of the districts the board may give consideration to the following factors: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the districts.

SEC. 2. Section 35101 of the Elections Code is amended to read:

35101. Following each decennial federal census, and using that census as a basis, the council shall, by ordinance or resolution, adjust the boundaries of any or all of the councilmanic districts of the city so that the districts shall be as nearly equal in population as may be and shall comply with the applicable provisions of Section 1973 of Title 42 of the United States Code, as amended. In establishing the boundaries of the districts the council may give consideration to the

following factors: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the districts.

CHAPTER 1478

An act to amend Section 44252 of the Education Code, relating to credentialing, and making an appropriation therefor.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990.]

I am deleting the $80,000 appropriation contained in Section 4 of Assembly Bill No. 3768.

This bill would require the Commission on Teacher Credentialing (CTC) to contract for an independent evaluation of the California Basic Education Skills Proficiency Test (CBEST). The evaluation shall include an assessment of the nature and extent of differential passage rates among ethnic minority groups and shall include recommendations on how to eliminate or reduce the discrepancies. This bill would also appropriate $80,000 from the Teacher Credentials Fund (TCF) for the study.

I am concerned with the appropriation contained in the bill. The level of funding provided from the TCF in the 1990 Budget Act is the maximum amount that can be expended while ensuring a sufficient TCF reserve. Any additional expenditures, as proposed by this bill, could reduce the reserve balance below a necessary and prudent level

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1991–92. Only at that time can the relative merits of this program be reviewed in comparison to all other funding projects. The budget process weighs all demands on the state's revenues and directs resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Assembly Bill No 3768.

GEORGE DEUKMEJIAN, Governor

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The passage rates for persons from various ethnic minority groups who have taken the California Basic Educational Skills Test (CBEST) have been consistently lower than those for nonminorities. In 1988-89, the passage rate for persons from ethnic minority groups was 61 percent, in comparison to a passage rate of 80 percent for nonminorities.

(b) The lower passage rates for persons from ethnic minority groups has a negative impact upon the available supply of ethnic minority teachers.

(c) In 1985, the Commission on Teacher Credentialing convened a panel to review the CBEST for possible ethnic minority group bias. According to the commission, the panel found that although only a few of the questions on the test were judged to be biased, the use of a standardized test for certification and employment could result in bias against some ethnic minority groups. The panel concluded that several factors could possibly contribute to that bias, including the

applicants' unfamiliarity with multiple choice testing formats and the use of a timed test.

SEC. 2. The Commission on Teacher Credentialing shall contract for an independent evaluation of the California Basic Educational Skills Test (CBEST), administered pursuant to Section 44252.5 of the Education Code. The evaluation shall include, but shall not be limited to, an assessment of the nature and extent of differential passage rates among ethnic minority groups and shall make recommendations on how to eliminate or reduce those discrepancies.

The commission shall submit a report to the Legislature on the results of the evaluation, together with any policy recommendations, on or before December 31, 1991.

SEC. 3. Section 44252 of the Education Code is amended to read:

44252. (a) The commission shall establish standards and procedures for the initial issuance and renewal of credentials.

(b) Commencing on February 1, 1983, the Commission on Teacher Credentialing shall not issue initially any credential, permit, certificate, or renewal of an emergency credential to any person to serve in the public schools unless the person has demonstrated proficiency in basic reading, writing, and mathematics skills in the English language as provided in Section 44252.5. However, an emergency credential holder who has passed the basic skills proficiency test shall not be required to repeat the test in order to obtain a renewal of his or her emergency credential. The commission shall exempt from the basic skills proficiency test requirement any of the following persons:

(1) A person credentialed solely for the purpose of teaching adults in an apprenticeship program.

(2) An applicant for an adult education designated subject credential for other than an academic subject.

(3) A person credentialed in another state who is an applicant for employment in a school district in this state who has passed a basic skills proficiency examination which has been developed and administered by the school district offering that person employment, or by cooperating school districts, or by the appropriate county office of education. School districts administering a basic skills proficiency examination under this paragraph shall comply with the requirements of subdivision (h) of Section 44830. Such an applicant shall be granted a nonrenewable credential, valid for not longer than one year, pending fulfillment of the basic skills proficiency requirement pursuant to Section 44252.5.

(4) An applicant for a child care center permit or a permit authorizing service in a development center for the handicapped, so long as the holder of the permit is not required to have a baccalaureate degree.

(5) The holder of a credential, permit, or certificate to teach, other than an emergency credential, who seeks an additional authorization to teach.

(6) An applicant for a credential to provide service in the health profession.

(c) By December 31, 1982, the Superintendent of Public Instruction shall adopt an appropriate state test to measure proficiency in these basic skills. In adopting the test, the superintendent shall seek assistance from the commission and an advisory board. A majority of the members of the advisory board shall be classroom teachers. The board shall also include representatives of local school boards, school administrators, parents, and postsecondary institutions.

The superintendent shall adopt any normed test that the superintendent determines will sufficiently test basic skills for purposes of this section.

The superintendent, in conjunction with the commission and approved teacher training institutions, shall take steps necessary to insure the effective implementation of this provision.

(d) Nothing in this section shall be construed as requiring the holders of, or applicants for, a designated subjects special subjects credential or vocational designated subject credential to pass the state basic skills proficiency test, unless the requirements for the specific credential required the possession of a baccalaureate degree. The governing board of each school district, or each governing board of a consortium of school districts, or each governing board involved in a joint powers agreement, which employs a holder of a designated subjects special subjects credential or vocational designated subject credential shall establish its own basic skills proficiency criteria for the holders of these credentials and shall arrange for those individuals to be assessed. The basic skills proficiency criteria established by the governing board shall be at least equivalent to the test required by the district, or in the case of a consortium or a joint powers agreement, by any of the participating districts, for graduation from high school. The governing board or boards may charge a fee to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test.

(e) The commission shall compile data regarding the rate of passing the state basic skills proficiency test by persons who have been trained in various institutions of higher education. The data shall be available to members of the public, including to persons who intend to enroll in teacher education programs.

(f) Each applicant to an approved credential program, unless exempted by subdivision (b), shall take the state basic skills proficiency test in order to provide both the prospective applicant and the program with information regarding the applicant's proficiency level. Test results shall be forwarded to each California postsecondary institution to which the applicant has applied. The program shall use test results to ensure that upon admission, each applicant receives appropriate academic assistance necessary to pass the state basic skills proficiency test. Persons residing outside the

state shall take the test no later than the second available administration following their enrollment in a credential program.

It is the intent of the Legislature that applicants for admission to teacher preparation programs not be denied admission on the basis of state basic skills proficiency test results.

SEC. 4. The sum of eighty thousand dollars ($80,000) is hereby appropriated from the Teacher Credentials Fund to the Commission on Teacher Credentialing for the purpose of contracting for the independent evaluation of the California Basic Educational Skills Test (CBEST) described in Section 2.

CHAPTER 1479

An act to amend Sections 94301, 94302, 94303, 94304, 94305, 94306, 94310, 94311, 94312, 94312.2, 94313, 94315, 94320, 94330, 94331.5, 94333, 94334, 94336, 94342, and 94344 of, to amend and renumber the headings of Article 5 (commencing with Section 94330) and Article 6 (commencing with Section 94331) of Chapter 3 of Part 59 of, to amend and renumber Sections 94311.4 and 94311.5 of, and to add Sections 94305.5, 94311.7 and 94346 to, the Education Code, relating to education.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 94301 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94301. It is the intent of the Legislature to promote the effective integration of private postsecondary education into all aspects of California's education system and to foster and improve the educational programs and services of these institutions while protecting the citizens of the state from fraudulent or substandard operations.

It is further the intent of the Legislature to recognize the enormous diversity of California's private postsecondary educational enterprise, with its approximately 3,000 privately supported institutions of academic and vocational education.

It is further the intent of the Legislature to provide for the protection, education, and welfare of citizens of California, its postsecondary educational institutions, and its students by providing for all of the following:

(a) Ensuring minimum standards of instructional quality and institutional stability for all students in all types of institutions, and thereby encourage the recognition by public and private institutions of completed coursework and degrees and diplomas issued by private institutions, to the end that students will be provided equal

opportunities for equal accomplishment and ability.

(b) Establishing minimum standards concerning the quality of education, ethical and business practices, health and safety, and fiscal responsibility to provide protections against substandard, transient, unethical, deceptive, or fraudulent institutions and practices.

(c) Prohibiting the granting of false or misleading educational credentials.

(d) Prohibiting misleading literature, advertising, solicitation, or representations by private educational institutions or their agents.

(e) Recognizing the importance of providing adequate funding through application and renewal fees and federal funding for the veteran's approval process to support the state's activities in implementing this chapter.

(f) Protecting the consumer and students against fraud, misrepresentation, or other practices which may lead to an improper loss of funds paid for educational costs, whether financed through personal resources or state and federal student financial aid.

(g) Establishing a path for the development of institutions offering fields of study or methods of instruction and innovative educational delivery systems not previously recognized in order to encourage them to become fully approved institutions.

(h) Recognizing and encouraging quality nongovernmental accreditation, while not ceding to that or any other nongovernmental process the responsibility for state oversight for purposes of approval if the accreditation process fails either to protect minimum standards of quality or to acknowledge legitimate innovative methods in postsecondary education.

(i) Establishing an administrative agency staffed by individuals who are knowledgeable about private academic and vocational education, and charged with the responsibility of developing policies and procedures for the oversight and approval of private postsecondary and vocational education, including the responsibility for managing a broadly construed policy and planning process that seeks to improve state accountability for private postsecondary and vocational education as well as to improve the articulation of private postsecondary and vocational education with the public and independent postsecondary educational community. It is the intent of the Legislature that current employees of the Private Postsecondary Education Division of the State Department of Education shall be covered by Section 19050.9 of the Government Code during the establishment of the new administrative agency. This new body should provide the leadership and planning needed to maintain and develop a strong private sector of this community.

SEC. 2. Section 94302 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94302. As used in this chapter, unless the context requires otherwise:

(a) "Accredited" means that an institution has been recognized or approved as meeting the standards established by an accrediting

agency recognized by the United States Department of Education, or the Committee of Bar Examiners for the State of California. It shall not include those institutions that have applied for accreditation, or are identified by accrediting associations as candidates for accreditation or have provisional accreditation.

(b) "Agency" means any person or business entity, regardless of the form of organization, that employs or in any manner contracts with one or more agents. "Agency" does not include an institution.

(c) "Agency approval" means a written document issued by the Council for Private Postsecondary and Vocational Education authorizing a business entity or an institution to engage in the recruitment of students for enrollment in private postsecondary and vocational institutions approved under this chapter.

(d) "Agent" means any person who, at a place away from the institution's premises or site of instruction, for consideration, solicits, promotes, advertises, offers, or attempts to secure enrollment for an institution, refers any person to an institution either for enrollment or to receive a solicitation for enrollment, or accepts application fees or admission fees for education in an institution. Administrators and faculty who make informational public appearances, but whose primary task does not include service as a paid recruiter, are exempted from this definition.

(e) "Agent's permit" means a nontransferable written document issued to an agent pursuant to the provisions of this chapter by the Council for Private Postsecondary and Vocational Education.

(f) "Applicant" means a new institution that has submitted an application but has not been evaluated by the council. An applicant institution shall not enroll students or offer educational services.

(g) "Approval" or "approval to operate" means that the council has determined and certified that an institution meets minimum standards established by the council for integrity, financial stability, and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of students' achievement prior to, during, and at the end of its program.

(h) "Branch campus" means any campus, satellite facility, extension classroom, office, or location affiliated with an educational institution, other than the main campus or primary administrative location of the institution, in which students complete, while in physical residence, all or any part of a program of instruction.

(i) "Certificate of authorization for service" means a written, nontransferable document issued by the council authorizing an individual to be an instructor or administrator in any private postsecondary educational institution in California which is approved under subdivision (a) of Section 94311.

(j) "Correspondence school" or "home study school" means any institution that provides correspondence lessons for study and completion by a student at a location separate from the institution, including those institutions which offer that instruction by correspondence in combination with in-residence instruction.

(k) "Council" means the Council for Private Postsecondary and Vocational Education established pursuant to Section 94304.

(*l*) "Course of study" means either a single course or a set of related courses for which a student enrolls.

(m) "Degree" means any "academic degree" or "honorary degree" or title of any designation, mark, appellation, series of letters or words such as, but not limited to, associate, bachelor, master, doctor, or fellow which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level or is an honorary title conferred for recognition of some meritorious achievement.

(n) "Diploma" means any "diploma," "certificate," "transcript," "document," or other writing in any language other than a degree which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level.

(o) "Education," or "education services," or "educational program" includes, but is not limited to, any class, course, or programs of training, instruction, or study.

(p) "Institution" means any private postsecondary educational institution.

(q) "Institutional approval" means an institution that has been evaluated by the council and has been found to be in compliance with the council's standards pursuant to this chapter.

(r) "Instruction" includes any specific, formal arrangement by an institution or its enrollees to participate in learning experiences in which the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(s) "Out-of-state school" means any private postsecondary educational institution offering career or job training programs, including both an in-residence institution and a home study institution which has its place of instruction or its principal location outside the boundaries of the state, or which offers or conducts courses of instruction or subjects on premises maintained by the school outside the boundaries of the state, or which provides correspondence or home study lesson materials from a location outside the boundaries of this state, or which evaluates completed lesson materials or otherwise conducts its evaluation service from a location outside the boundaries of this state, or which otherwise offers or provides California students with courses of instruction or subjects through activities engaged in or conducted outside the boundaries of the state.

(t) "Private postsecondary educational institution" means any person, firm, association, partnership, or corporation doing business in California by awarding degrees or diplomas or by offering to the public for a tuition, fee, or other charge, (1) instructional or

educational services or training in any academic, technical, professional, mechanical, business, or industrial occupation, either in the recipient's home, at a designated location, or by mail , or (2) career or job training programs in any technical, professional, mechanical, business, or industrial occupation. The following are not considered to be private postsecondary educational institutions under this chapter:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the 12th grade.

(2) Education solely avocational or recreational in nature, and institutions offering this education exclusively.

(3) Education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(5) A nonprofit institution owned, controlled, operated, and maintained by a bona fide church or religious denomination if the education is limited to instruction in the principles of that church or denomination and no degree is awarded by the institution as a product of that instruction.

(u) "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(v) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, or from or through which, educational services are offered or educational degrees or diplomas are offered or granted.

SEC. 2.5. Section 94302 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94302. As used in this chapter, unless the context requires otherwise:

(a) "Accredited" means that an institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the United States Department of Education, or the Committee of Bar Examiners for the State of California. It shall not include those institutions that have applied for accreditation, or are identified by accrediting associations as candidates for accreditation or have provisional accreditation.

(b) "Agency" means any person or business entity regardless of the form of organization, that employs or in any manner contracts with one or more agents. "Agency" does not include an institution.

(c) "Agency approval" means a written document issued by the Council for Private Postsecondary and Vocational Education authorizing a business entity or an institution to engage in the recruitment of students for enrollment in private postsecondary and vocational institutions approved under this chapter.

(d) "Agent" means any person who, at a place away from the

institution's premises or site of instruction, for consideration, solicits, promotes, advertises, offers, or attempts to secure enrollment for an institution, refers any person to an institution either for enrollment or to receive a solicitation for enrollment, or accepts application fees or admissions fees for education in an institution. Administrators and faculty who make informational public appearances, but whose primary task does not include service as a paid recruiter, are exempted from this definition.

(e) "Agent's permit" means a nontransferable written document issued to an agent pursuant to the provisions of this chapter by the Council for Private Postsecondary and Vocational Education.

(f) "Applicant" means a new institution that has submitted an application but has not been evaluated by the council. An applicant institution shall not enroll students or offer educational services.

(g) "Approval" or "approval to operate" means that the council has determined and certified that an institution meets minimum standards established by the council for integrity, financial stability, and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of students' achievement prior to, during, and at the end of its program.

(h) "Branch campus" means any campus, satellite facility, extension classroom, office, or location affiliated with an educational institution, other than the main campus or primary administrative location of the institution, in which students complete, while in physical residence, all or any part of a program of instruction.

(i) "Certificate of authorization for service" means a written, nontransferable document issued by the council authorizing an individual to be an instructor or administrator in any private vocational postsecondary educational institution in California which is approved under subdivision (a) of Section 94311.

(j) "Correspondence school" or "home study school" means any institution that provides correspondence lessons for study and completion by a student at a location separate from the institution, including those institutions which offer that instruction by correspondence in combination with in-residence instruction.

(k) "Council" means the Council for Private Postsecondary and Vocational Education established pursuant to Section 94304.

(*l*) "Course of study" means either a single course or a set of related courses for which a student enrolls.

(m) "Degree" means any "academic degree" or "honorary degree" or title of any designation, mark, appellation, series of letters or words such as, but not limited to, associate, bachelor, master, doctor, or fellow which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level or is an honorary title conferred for recognition of some meritorious achievement.

(n) "Diploma" means any "diploma," "certificate," "transcript," "document," or other writing in any language other than a degree

which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level.

(o) "Education," or "education services," or "educational program" includes, but is not limited to, any class, course, or programs of training, instruction, or study.

(p) "Institution" means any private postsecondary educational institution.

(q) "Institutional approval" means an institution that has been evaluated by the council and has been found to be in compliance with the council's standards pursuant to this chapter.

(r) "Instruction" includes any specific, formal arrangement by an institution or its enrollees to participate in learning experiences in which the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(s) "Out-of-state school" means any private postsecondary or vocational educational institution offering career or job training programs, including both an in-residence institution and a home study institution which has its place of instruction or its principal location outside the boundaries of the state, or which offers or conducts courses of instruction or subjects on premises maintained by the school outside the boundaries of the state, or which provides correspondence or home study lesson materials from a location outside the boundaries of this state, or which evaluates completed lesson materials or otherwise conducts its evaluation service from a location outside the boundaries of this state, or which otherwise offers or provides California students with courses of instruction or subjects through activities engaged in or conducted outside the boundaries of the state.

(t) "Private postsecondary educational institution" means any person, firm, association, partnership, or corporation doing business in California by awarding degrees or by diploma or offering to the public for a tuition, fee, or other charge, (1) instructional or educational services or training in any academic, technical, professional, mechanical, business, or industrial occupation, either in the recipient's home, at a designated location, or by mail, or (2) career or job training programs in any technical, professional, mechanical, business, or industrial occupation. The following are not considered to be private postsecondary educational institutions under this chapter:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the 12th grade.

(2) Education solely avocational or recreational in nature, and institutions offering this education exclusively.

(3) Education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(5) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, if the education is limited to instructions in the principles of that church or denomination, or to courses offered pursuant to Section 2789 of the Business and Professions Code, and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church or denomination. Institutions operating under the provisions of this paragraph shall offer degrees and diplomas only in the beliefs and practices of the denomination, church, or religion. The enactment of this paragraph expresses legislative intent that the state shall not involve itself in the content of degree programs awarded by any institution operating under the provisions of this paragraph, as long as the institution awards degrees and diplomas only in areas specified in the previous sentence. Institutions operating under the provisions of this paragraph shall not award degrees in any area of physical science. Any degree or diploma granted in any area of study under these provisions must contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area. The enactment of this paragraph is intended to prevent any entity claiming to be a nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, from marketing and granting degrees or diplomas which are represented as being linked to their church or denomination but which, in reality, are degrees in secular areas of study.

(u) "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(v) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, or from or through which, educational services are offered or educational degrees or diplomas are offered or granted.

SEC. 3. Section 94303 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94303. Articles 1.5 and 2 of this chapter, subdivision (c) of Section 94320, and Sections 94322, 94330, 94331, 94331.5, 94334, 94338, 94342, 94343, 94343.2, and 94343.5 shall not apply to institutions which are accredited by the Western Association of Schools and Colleges and are either (1) incorporated and lawfully operate as nonprofit public

benefit corporations pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code and are not managed or administered by any entity for profit, or (2) exclusively confer degrees upon the completion of a course of study of two or more years. Within 30 days of any action by the Western Association of Schools and Colleges which establishes, reaffirms, or publicly sanctions the accreditation of a private institution operating in the state, the association shall notify the council of that action, and provide a copy of any public statements regarding the reasons for sanctions.

SEC. 3.5. Section 94304 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94304. (a) There is hereby established in state government a Council for Private Postsecondary and Vocational Education whose members shall be appointed no later than July 1, 1990. Commencing January 1, 1991, the council shall have the responsibility for approving and regulating private postsecondary educational institutions and for developing state policies for private postsecondary and vocational education in California. The council shall represent the private postsecondary educational institutions in all state level planning and policy discussions about postsecondary and vocational education, and shall have as its objective the development of a strong, vigorous, and widely respected sector of private postsecondary and vocational education.

(b) The council shall be composed of 15 voting members, including the following representatives:

(1) Two representatives from private degree granting institutions approved under Section 94310.

(2) Two representatives from vocational institutions approved under Section 94311.

(3) Two representatives from accredited private postsecondary institutions operating in California. One representative shall be from an out-of-state accredited degree-granting postsecondary educational institution approved under Section 94310, and one representative shall be from an accredited vocational institution approved under Section 94311.

(4) A representative of the California Student Aid Commission, nominated by the executive director of the commission, and appointed by the Governor.

(5) The Superintendent of Public Instruction, or his or her designee.

(6) The Secretary of State and Consumer Services, or his or her designee.

(7) Six members of the general public.

(8) The appointment process for the council shall be as follows:

(A) The Governor shall appoint one representative from an institution approved under Section 94310, one representative from a vocational institution approved under Section 94311, one representative from an accredited vocational school, and three

members from the general public.

(B) The Senate Rules Committee shall appoint one representative from an institution approved under Section 94310, one representative from an out-of-state accredited degree granting college or university operating in California, and one member of the general public.

(C) The Speaker of the Assembly shall appoint one representative from a vocational institution approved under Section 94311, and two members of the general public.

(D) The institutional representatives shall be appointed from a list or lists of persons nominated by private postsecondary or vocational educational institutions.

(9) In addition, the following shall serve as nonvoting ex officio members of the council:

(A) The Attorney General of the State of California, or his or her designee.

(B) The Director of the Department of Employment Development, or his or her designee.

(C) The Director of the California Postsecondary Education Commission, or his or her designee.

(D) The Director of the Youth, Adult, and Alternative Educational Services Division of the State Department of Education, or his or her designee.

(E) The Chancellor of the California Community Colleges, or his or her designee.

(10) The members of the council designated in paragraphs (5) and (6) shall serve at the pleasure of their respective appointing authorities. All other voting members of the council shall serve a four-year term, and no members shall serve more than two full terms.

(11) No person who is employed by an institution of public or private postsecondary or vocational education shall be appointed to or serve on the council as a member of the general public.

(12) It is the intent of the Legislature that the members of the general public appointed to the council have a strong interest in developing private postsecondary and vocational education, and include representation from businesses that employ persons in positions requiring academic, vocational, or technical education.

(c) It is the intent of the Legislature that the council shall be broadly and equitably representative of the general public and that it include adequate representation on the basis of gender and on the basis of the significant racial, ethnic, and economic groups in the state. No person appointed pursuant to this section shall, with respect to any matter before the council, vote for or on behalf of, or in any way exercise the vote of, any other member of the council.

(d) The council shall meet as often as it deems necessary to carry out its duties and responsibilities. Any member of the council who in any calendar year misses more than one-third of the meetings of the full council forfeits his or her office, thereby creating a vacancy.

(e) The council shall select a chair from among the members representing the general public. The chair shall hold office for a term of two years.

(f) The council may appoint any subcommittees or advisory committees it deems necessary to advise the council on matters of educational policy. The council shall appoint and may remove a director in the manner prescribed in this section. The director shall appoint persons to any civil service staff positions authorized by the council. The staffing shall include individuals with responsibilities for each of the following areas:

(1) The approval of vocational institutions.

(2) The approval of degree granting institutions.

(3) The approval of courses offered to veterans by vocational and degree granting institutions. For the purposes of implementing the requirements of this paragraph, the council is hereby designated as the state agency responsible for the administration of veteran educational benefit programs.

(4) Institutional relations to develop strong relationships with agencies such as the State Department of Education, the California Postsecondary Education Commission, the Student Aid Commission, the Department of Consumer Affairs, and nongovernmental accrediting associations.

(5) Legislative and public affairs.

(6) Staff administrative services.

(g) It is the intent of the Legislature that the council's approval and regulating responsibilities be funded solely through approval fees and federal funding provided to implement the approval process for courses offered to veterans by vocational and degree granting institutions. All fees derived from postsecondary degree granting institutions and their veterans' educational benefits shall be deposited in a special degree granting institution account, which is hereby created, in the Private Postsecondary and Vocational Education Administration Fund All fees derived from vocational education institutions and their veterans' educational benefits shall be deposited into a special vocational education account, which is hereby created, in the Private Postsecondary and Vocational Education Administration Fund. The council shall establish an accounting procedure to allocate the time required to approve all degree granting institutions and all vocational education institutions and shall charge these accounts accordingly. Any general administrative expenses shall be allocated on a pro rata basis.

(h) The council shall prescribe rules for the transaction of its own affairs, subject to all the following requirements and limitations:

(1) The votes of all representatives shall be recorded.

(2) Effective action shall require the affirmative vote of a majority of all the duly appointed members of the council, not including vacant council seats.

(3) The affirmative votes of two-thirds of all the duly appointed members of the council, not including vacant council seats, shall be

necessary for the appointment or removal of the director.

(i) There is hereby established an advisory committee to the council and the director, consisting of representatives of the Board of Cosmetology, the Board of Barber Examiners, the Board of Vocational Nurse and Psychiatric Technician Examiners, the Board of Behavioral Science Examiners, the California Committee of Bar Examiners, the Commissioner of Real Estate, and other state agencies responsible for monitoring private postsecondary institutions. Meeting agenda items and associated documents of the council shall be provided to the advisory committee in a timely manner.

SEC. 4. Section 94305 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94305. The council shall have the following functions and responsibilities in its capacity as the statewide private postsecondary and vocational educational planning and licensing agency:

(a) The establishment of policies for the administration of this chapter.

(b) The establishment of minimum criteria for the approval of private postsecondary or vocational educational institutions to operate in California and award degrees and diplomas, and for the approval of institutions which meet the criteria.

(c) The adoption of rules and regulations governing the conduct of institutions under this chapter, including, but not limited to, minimum state standards for refund policies, advertising, enrollment agreements and contracts, consumer information, attendance policies, and financial responsibility.

(d) The adoption of procedures necessary or appropriate for the conduct of its work and the implementation of this chapter consistent with its adopted rules and regulations, including the adoption of regulations to ensure that institutions will receive adequate notice and a full opportunity to be heard concerning actions to deny, suspend, or revoke approval or to place an institution on probation.

(e) The representation of California's segment of private postsecondary and vocational education in all state level discussions and planning for postsecondary and vocational education, including, but not limited to, representation on the California Postsecondary Education Commission, and the commission's advisory committee, and voluntary postsecondary or vocational organizations.

(f) The publication biennially for public distribution of a directory of all private postsecondary and vocational educational institutions approved to operate in California under this chapter.

(g) The preparation annually of a proposed budget for the support of activities under this chapter and to secure appropriate funding necessary for the effective implementation of this chapter.

(h) Conducting research and planning for private postsecondary and vocational education, including the compilation of important institutional, faculty, and student data.

(i) The impaneling of special committees of technically qualified persons to assist the council in the development of standards for education and educational institutions and the evaluation of any application or institutions pursuant to this chapter. The members of the special committees shall receive no compensation but shall be reimbursed for their actual expenses for attendance at official meetings and actual expenses when on official council business. The members of the special committees shall serve at no expense to the state. The actual travel and per diem expenses incurred by each member of a special committee shall be reimbursed by the institution which is the subject of inspection or investigation.

SEC. 4.3. Section 94305.5 is added to the Education Code, to read:

94305.5. Each member of the council shall receive a stipend of one hundred dollars ($100) for each day in which he or she attends any meeting of the council or any meeting of any committee or subcommittee of the council, of which committee or subcommittee he or she is a member, and which committee or subcommittee meeting is conducted for the purpose of carrying out the powers and duties of the council and, in addition, shall receive his or her actual and necessary traveling expenses incurred in the course of his or her duties.

SEC. 4.5. Section 94306 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94306. (a) The initial appointments to the council shall be made in the following manner:

(1) The Governor shall appoint two members for a two-year term, two members for a three-year term, and two members for a four-year term. The representative of the California Student Aid Commission shall be appointed for a four-year term.

(2) The Senate Rules Committee shall appoint one member for a two-year term, one member for a three-year term, and one member for a four-year term.

(3) The Speaker of the Assembly shall appoint one member for a two-year term, one member for a three-year term, and one member for a four-year term.

(b) All initial appointments to the council shall become effective on July 1, 1990. However, the length of the terms of the initial appointments shall be the designated number of years beginning on the date of January 1, 1991. All subsequent terms shall begin on January 1 of the year in which the respective terms are to commence.

(c) The Advisory Council for Private Postsecondary Educational Institutions shall be continued in existence until June 30, 1990, in order to provide communication with institutions approved under this chapter, to provide leadership in the transition of authority from the State Department of Education to the council, and to present recommendations to the council and to the California Postsecondary Education Commission for implementation of the requirements of this chapter. The executive committee of the advisory council shall present its advice and recommendations to the council at its initial

meeting in July 1990 and shall serve in a resource capacity to the council during the next three-month period.

(d) The Executive Director of the California Postsecondary Education Commission shall call and chair the initial meeting of the council in July 1990 and shall serve as the chair until the council selects a chairperson. The council shall adopt procedures for the recruitment and appointment of a director and staff. On January 1, 1991, the council shall succeed to the powers, duties, and functions vested in the Superintendent of Public Instruction for the approval and monitoring of private postsecondary and vocational educational institutions. Commencing July 1, 1990, all expenses associated with the operation of the council shall be charged to and paid for from the Private Postsecondary Education Administration Fund.

(e) All responsibilities previously assigned to the Superintendent of Public Instruction for the approval and monitoring of private postsecondary and vocational education pursuant to statutes, legislative resolutions, and budget language shall be assumed by the council commencing January 1, 1991. On that date the Private Postsecondary Education Administration Fund, the Student Tuition Recovery Fund, and all ongoing projects, information, and files maintained by the Superintendent of Public Instruction and the State Department of Education shall be transferred to the council. The Private Postsecondary Education Administration Fund shall be renamed the Private Postsecondary and Vocational Education Administration Fund. All state civil service employees who were employed on December 31, 1990, to carry out the functions transferred to the council from the Private Postsecondary Education Division of the State Department of Education, shall be transferred to the council on January 1, 1991. No appointments shall be made to the Private Postsecondary Education Division between December 31, 1989, and December 31, 1990, without the approval of either the Advisory Council for Private Postsecondary Educational Institutions or the Council for Private Postsecondary and Vocational Education.

SEC. 5. Section 94310 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94310. No private postsecondary educational institution may issue, confer, or award an academic or honorary degree unless the institution meets the requirements of subdivision (a) or (i), as follows:

(a) The institution is approved by the Council for Private Postsecondary and Vocational Education to operate in California and award degrees. The council shall not approve an institution to issue degrees, diplomas, or certificates pursuant to this subdivision until it has conducted a qualitative review and assessment of, and has approved, each degree program offered by the institution, and all of the operations of the institution, and has determined all of the following:

(1) The institution has the facilities, financial resources, administrative capabilities, faculty, and other necessary educational

expertise and resources to ensure its capability of fulfilling the program or programs for enrolled students.

(2) The faculty is fully qualified to undertake the level of instruction that they are assigned and shall possess appropriate degrees and have demonstrated professional achievement in the major field or fields offered, in sufficient numbers to provide the educational services.

(3) The education services and curriculum clearly relate to the objectives of the proposed program or programs and offers students the opportunity for a quality education.

(4) The facilities are appropriate for the defined educational objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.

(5) The course of study for which the degree is granted provides the curriculum necessary to achieve its professed or claimed academic objective for higher education, and the institution requires a level of academic achievement appropriate to that degree.

(6) The institution provides adequate student advisement services, academic planning and curriculum development activities, research supervision for students enrolled in Ph.D. programs, and clinical supervision for students enrolled in various health profession programs.

(7) If the institution offers credit for prior experiential learning it may do so only after an evaluation by qualified faculty and only in disciplines within the institution's curricular offerings that are appropriate to the degree to be pursued. The council shall develop specific standards regarding the criteria for awarding credit for prior experiential learning at the graduate level, including the maximum number of hours for which credit may be awarded.

(b) The approval process shall include a qualitative review and assessment of all of the following:

(1) Institutional purpose, mission, and objectives.
(2) Governance and administration.
(3) Curriculum.
(4) Instruction.
(5) Faculty, including their qualifications.
(6) Physical facilities.
(7) Administrative personnel.
(8) Procedures for keeping educational records.
(9) Tuition, fee, and refund schedules.
(10) Admissions standards.
(11) Financial aid policies and practices.
(12) Scholastic regulations and graduation requirements.
(13) Ethical principles and practices.
(14) Library and other learning resources.
(15) Student activities and services.
(16) Degrees offered.

The standards and procedures utilized by the council shall foster the development of high quality, innovative educational programs

and emerging new fields of study within postsecondary education. In addition, the standards and procedures utilized by the council shall not unreasonably hinder educational innovation and competition.

It is the intent of the Legislature that the minimum standards for approval for degree-granting institutions established in Section 94310 not exceed the accreditation standards utilized by the Western Association of Schools and Colleges.

(c) The council may, at its discretion, delegate the responsibilities for regulation and oversight of accredited degree granting law schools to the California Committee of Bar Examiners, and that accreditation may be accepted by the council in lieu of state approval.

(d) (1) The council shall conduct a qualitative review and assessment of the institution and all programs offered, including the items listed in subdivision (b), through a comprehensive onsite review process, performed by a qualified visiting committee impaneled by the council for that purpose. Each institution shall submit a single application for all operations in California, and the application shall include a single fee which is institution-based and not site-based. The visiting committee shall be impaneled by the council within 90 days of the date of the receipt of a completed application and shall be composed of educators, and other individuals with expertise in the areas listed in subdivision (b), from degree-granting institutions legally operating within the state. Within 90 days of the receipt of the visiting committee's evaluation report and recommendations, or any reasonable extension of time not to exceed 90 days, the council shall take one of the following actions:

(A) If the institution is in compliance with this chapter and has not operated within three years before the filing of the application in violation of the provisions of this chapter then in effect, the council may grant an approval to operate for a period not to exceed five years.

(B) If the institution is in compliance with this chapter, but has operated within three years before the filing of the application in violation of the provisions of this chapter then in effect, or if the council, in its discretion, determines that an unconditional grant of approval to operate is not in the public interest, the council may grant a conditional approval to operate subject to whatever restrictions the council deems appropriate. The council shall notify the institution of the restrictions, the bases for the restrictions, and the right to request a hearing to contest the restrictions. Conditional approval shall not exceed two years.

(C) The council may deny the application. If the application is denied, the council may, in its discretion, permit the institution to continue offering the course of instruction to students already enrolled or may order the institution to cease instruction and provide a refund of tuition and all other charges to students.

(D) (i) If an institution is not operating in California when it

applies for approval to operate for itself or a branch or satellite campus, the institution shall file with its application an operational plan establishing that the institution will satisfy the minimum standards set forth in subdivision (a). The operational plan shall also include a detailed description of the institution's program for implementing the operational plan, including proposed procedures, financial resources, and the qualifications of owners, directors, officers, and administrators employed at the time of the filing of the application. The council may request additional information to enable the council to determine whether the operational plan and its proposed implementation will satisfy these minimum standards.

(ii) If the council determines that the operational plan satisfies the minimum standards described in subdivision (a), that the institution demonstrates that it will implement the plan, and that no ground for denial of the application exists, the council shall grant a temporary approval to operate, subject to any restrictions the council reasonably deems necessary to assure compliance with this chapter, pending a qualitative review and assessment as provided in subdivisions (a) and (b). The council shall inspect the institution, or branch or satellite campus if approval is sought for that campus, between 90 days and 180 days after operation has begun under the temporary approval to operate. Within 90 days following the council's inspection of the institution, the council shall act as provided in this subdivision.

(2) When evaluating an institution whose purpose is to advance postsecondary education through innovative methods, the visiting committee shall comprise educators who are familiar with and receptive to evidence bearing on the educational quality and accomplishments of those methods.

(3) The standards and procedures utilized by the council shall not unreasonably hinder educational innovation and competition.

(4) It is the intent of the Legislature that the council, prior to June 1, 1992, conduct an onsite review of all institutions approved by the Superintendent of Public Instruction between January 1, 1989, and December 31, 1990, that did not receive an onsite review by a visiting committee that included at least one permanent employee of the Private Postsecondary Education Division of the State Department of Education.

(5) Each institution or instructional program offering education for entry into a health care profession in which the provider has primary care responsibilities shall offer that education within a professional degree program which shall be subject to approval by the council pursuant to this section.

(e) If at any time the council determines that an institution has deviated from the standards for approval, the council may, after identifying for the institution the areas in which it has deviated from the standards, and after giving the institution due notice and an opportunity to be heard, place the institution on probation for a prescribed period of time, not to exceed 24 calendar months. During

the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the council, and special visits by authorized representatives of the council to determine progress toward total compliance. If, at the end of the probationary period, the institution has not taken steps to eliminate the cause or causes for its probation to the satisfaction of the council, the council may revoke the institution's approval to award degrees and provide notice to the institution to cease its operations.

(f) An institution may not advertise itself as an approved institution unless each degree program offered by the institution has been approved in accordance with the requirements of this section. The council shall review all operations of the institution, both within and outside of California. The council shall have the authority to conduct site visits outside of California when it deems these visits to be necessary. The council may authorize any institution approved to issue degrees under this section to issue diplomas for the completion of courses of study that are within the institution's approved degree granting programs.

(g) (1) All institutions operating on December 31, 1990, pursuant to licensure received under subdivision (a) of Section 94310.1 or approval received under Section 94310.2, shall receive approval for a period not to exceed four years. On a specified date prior to January 1, 1995, to be determined by the council, each institution granted approval pursuant to this subdivision shall file a completed application for reapproval pursuant to this section.

(2) All institutions operating on December 31, 1990, pursuant to candidate for approval status received pursuant to Section 94310.2 shall receive candidate for approval status for a period not to exceed two years. On a specified date prior to January 1, 1993, as determined by the council, each institution granted candidate for approval status pursuant to this subdivision shall file a completed application for approval pursuant to this section.

(h) All institutions operating pursuant to authorization received under Section 94310.3 or 94310.4, as in effect on December 31, 1990, shall receive candidate for approval status for a period not to exceed three years. On a specified date prior to January 1, 1994, to be determined by the council, each institution granted candidate for approval status pursuant to this subdivision shall file a completed application for approval pursuant to this section.

(i) Any public or private postsecondary educational institution incorporated in another state that has accreditation from a regional accrediting association recognized by the United States Department of Education at the time of the issuance of a degree, and that is approved by the council, may issue degrees, diplomas, or certificates. Accredited public or private postsecondary educational institutions incorporated in another state shall not offer degrees, diplomas, or certificates in California unless they comply with the provisions of this subdivision.

(1) The council shall not approve an institution to issue degrees, diplomas, or certificates pursuant to this subdivision until the council has conducted a qualitative review and assessment of and has approved, the operations of the institution in California, and the council has determined that the institution meets the following standards:

(A) The institution has financial resources to ensure the capability of fulfilling the program or programs for enrolled students.

(B) The faculty includes personnel who possess appropriate degrees from institutions accredited by a regional accrediting association recognized by the United States Department of Education in the degree major field or fields offered, in sufficient number to provide the educational services.

(C) The education services and curriculum clearly relate to the objectives of the proposed program or programs.

(D) The facilities are appropriate for the defined educational objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.

(E) The institution has verifiable evidence of academic achievement comparable to that required of graduates of other institutions operating in this state for the program or programs upon which the degree, diploma, or certificate is based.

(2) The council shall grant approved status under this subdivision for a period consistent with the postsecondary educational institution's regional accrediting association, but not to exceed five years.

(3) Institutions approved under this subdivision shall offer in California only programs that the institution can document to have been acknowledged and favorably reviewed by the home regional accrediting association.

(4) In reviewing the out-of-state accredited institutions, the council shall use as guidelines the standards and procedures developed by the special committee created pursuant to paragraph (5) of subdivision (b) of Section 94310.1, as in effect on December 31, 1989, and adopted by the California Postsecondary Education Commission. These standards and procedures were based on the following principles:

(A) Following the initial state review, subsequent onsite reviews by the council may be conducted in conjunction with institutional reviews by the regional accrediting association. However, if there is substantial evidence that the institution is not in compliance with state standards, the council may initiate a special review of the California operations of the institution.

(B) Each institution shall submit a single application for all operations in California, and the application shall include a single fee which is institution-based and not site-based.

(C) The council shall develop a procedural rationale to justify the number of sites to be visited by the state in the review of the institution's operations in California.

(D) The purpose of the onsite review by the council shall be to determine that operations by the institution in California meet the minimum state standards identified in statute.

(E) The standards and procedures shall not unreasonably hinder educational innovation and competition.

(5) The regulations used by the council to implement this chapter shall provide for consideration of the accredited institutions' stated educational goals, purposes, and objectives, in conducting the approval review of the California operations of out-of-state based institutions.

(A) These regulations shall include a formula to determine the institutional approval fee and the number of sites to be visited by the state.

(B) The regulations developed by the council shall be based on the procedures and standards recommended by the special committee and acted upon by the commission. In conducting the approval review of the operation of out-of-state accredited institutions in California, the council shall interpret the regulations based upon each institution's accredited educational purposes and objectives.

(6) All institutions operating under subdivision (b) of Section 94310.1, as it read on December 31, 1990, shall receive approval for a period not to exceed five years from the date of the institution's last review by the state. On a date to be specified by the council on or before January 1, 1996, each institution granted approval under this subdivision shall file a completed application for reapproval under this section.

SEC. 6. Section 94311 of the Education Code is amended to read:

94311. No private postsecondary educational institution, except those offering degrees and approved under the provisions of Section 94310, may offer education services or an education program, unless the institution or the branch or satellite campus at which these programs are offered, has been approved by the council as meeting the requirements of this section and, if regulated by an agency within the Department of Consumer Affairs, has obtained and retained the approval of that agency:

(a) If an institution is operating under the council's prior approval and the institution has applied for approval to operate for itself or a branch or satellite campus that is operating, the council shall not grant approval to operate until it has conducted a qualitative review and assessment of the operations of the institution in California, and determined that all of the following minimum standards have been satisfied:

(1) The quality and content of each course or program of instruction, training, or study may reasonably and adequately be expected to achieve the objective for which the course or program is offered. All courses offered by the institution shall meet the minimum standards prescribed by this subdivision. If an institution represents that a course or program leads to employment, the

quality, content, and instruction of the course or program shall be sufficient to assure that students may acquire the necessary level of education, training, skill, and experience to obtain employment in the occupation or job title to which the course or program of instruction is represented to lead.

(2) There is in the institution adequate space, equipment, instructional material, and instructor personnel to provide training of the quality needed to attain the objective described in paragraph (1).

(3) Every instructor and administrator possess adequate academic, experiential, and professional qualifications to teach the course or to perform the duties that the person is assigned and satisfies all standards established by the council by regulation, and holds an applicable and valid certificate of authorization for service issued by the council in the specified competence area in which the individual will serve. No person shall serve as an instructor or member of the administrative staff if that person has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of federal or state funds, or who has been judicially or administratively determined to have committed any violation of this chapter or of any law involving state or federal funds.

(4) The institution maintains for at least five years written records of the student's previous education and training, where applicable.

(5) A copy of the course outline, description of the occupations or job titles, if any, to which the course of instruction is represented to lead, schedule of tuition, fees and other charges, refund policy, regulations pertaining to tardiness, absence, grading policy and rules of operation and conduct is given to students prior to enrollment.

(6) The institution maintains and enforces adequate standards relating to, and maintains records of, attendance, satisfactory academic progress, and student performance to achieve the objective described in paragraph (1).

(7) The institution complies with all local city, county, municipal, state, and federal regulations relative to the safety and health of all persons upon the premises such as fire, building, and sanitation codes. The council may require evidence of compliance.

(8) The institution does not exceed enrollment which the facilities and equipment of the institution can reasonably handle.

(9) The institution's officers, directors, and owners demonstrate financial and fiduciary responsibility, as prescribed by statute, or by regulations adopted by the council.

(10) The institution is in compliance with this chapter and has developed policies and procedures designed to ensure that compliance.

(11) No circumstances exist which are grounds for the revocation or suspension of an approval to operate.

(12) The institution complies with Article 2.5 (commencing with Section 94316) if that article is applicable.

(13) Application for approval shall be made in writing on forms prescribed by the council, which shall include, if applicable to the institution, a statement of whether the institution claims that it is exempt or that a course or other educational service it offers is exempt from Article 2.5 (commencing with Section 94316), and the information required by subdivision (f) of Section 94319.2.

(b) Within 90 days following the receipt of an application from an institution that is operating under the superintendent's prior authorization or approval or the council's prior approval, and prior to granting any approval, a representative of the council shall personally inspect the institution and verify the institution's compliance with the standards prescribed by this chapter. The onsite inspection shall include an inspection of the institution's facilities and records, interviews of administrators, faculty, and students, and an observation of class instruction, as determined to be appropriate by the council. If the application is for approval to operate a branch or satellite campus that is in operation, the council shall inspect that branch or satellite campus as provided herein and may also inspect the institution operating the branch or satellite campus. The council may waive or modify the onsite inspection for an institution located outside of California or for an institution offering home study or correspondence courses. For the purposes of this section, "council's prior approval" includes the prior approval or authorization of the Superintendent of Public Instruction, if applicable.

(c) Within 90 days following the inspection described in subdivision (b) or any reasonable extension of time not to exceed 90 days, the council shall reach a decision on the merits and shall do one of the following:

(1) If the institution is in compliance with this chapter and has not operated within three years before the filing of the application in violation of the provisions of this chapter then in effect, the council may grant approval.

(2) If the institution is in compliance with this chapter, but has operated within three years before the filing of the application in violation of the provisions of this chapter then in effect, or if the council, in its discretion, determines that an unconditional grant of approval to operate is not in the public interest, the council may grant a conditional approval to operate subject to whatever restrictions the council deems appropriate. The council shall notify the institution of the restrictions, the bases for the restrictions, and the right to request a hearing to contest the restrictions.

(3) The council may deny the application if the institution does not comply with this chapter, including the minimum standards established in subdivision (a), or has operated within three years before the filing of the application in violation of the provisions of this chapter then in effect. If the application is denied, the council may, in its discretion, permit the institution to continue offering the course or courses of instruction to students already enrolled or may order the institution to cease all instruction and provide a refund of

tutition and all other charges to students. The council shall notify the institution of the denial, the bases for the denial, and the right of the institution to request a hearing to contest the denial.

(d) (1) If an institution is not operating in California when it applies for approval to operate for itself or a branch or satellite campus, the institution shall file with its application an operational plan establishing that the institution will satisfy the minimum standards set forth in subdivision (a). The operational plan shall also include a detailed description of the institution's program for implementing the operational plan, including proposed procedures, financial resources, and the qualifications of owners, directors, officers, and administrators employed at the time of the application's filing. The council may request additional information to enable the council to determine whether the operational plan and its proposed implementation will satisfy these minimum standards.

(2) If the council determines that the operational plan satisfies the minimum standards described in subdivision (a), that the institution demonstrates that it will implement the plan, and that no ground for denial of the application exists, the council shall grant a temporary approval to operate, subject to any restrictions the council reasonably deems necessary to assure compliance with this chapter, pending a qualitative review and assessment as provided in subdivisions (a) and (b). The council shall inspect the institution, or branch or satellite campus if approval is sought for that campus, between 90 days and 180 days after operation has begun under the temporary approval to operate. Within 90 days following the council's inspection of the institution, the council shall act as provided in subdivision (c).

(e) If an institution that is operating in California applies for approval to operate a branch or satellite campus that has not operated in this state, the institution shall file an operational plan for the branch or satellite campus as described in subdivision (d). The council shall evaluate the branch or satellite campus as provided in subdivision (d). The council may also evaluate the institution as provided in subdivisions (a) and (b) before determining whether to grant to the institution temporary or final approval to operate the branch or satellite campus. If the institution or the branch or satellite campus does not meet the requirements of this chapter or if the institution has operated within three years before the filing of the application in violation of the provisions of this chapter then in effect, the council may deny the application for approval to operate the branch or satellite campus or may grant a conditional approval to operate the branch or satellite campus subject to whatever restrictions the superintendent deems appropriate. The provisions for notice and hearing described in paragraphs (2) and (3) of subdivision (c) shall apply.

(f) No institution shall offer a course or program of instruction, training, or study at a campus that had not offered the course or program at the time the institution applied for approval to operate

that campus unless the council first approves the offering of the course or program after determining that it satisfies the minimum standards established in subdivision (a).

(g) All institutions operating in California on December 31, 1989, pursuant to the prior authority of subdivision (c) of former Section 94311, and which continued to operate under the requirements of this chapter on the operative date of this section, shall receive an approval status for a period not to exceed three years. On a specified date to be determined by the council on or before June 30, 1993, each institution granted an approval pursuant to this subdivision shall file a completed application for reapproval pursuant to this section. It is the intent of the Legislature that all private vocational institutions having a cumulative gross student loan default rate higher than 40 percent, as determined by the Student Aid Commission, shall be reviewed by the council on or before February 29, 1992, to determine if these institutions are in compliance with the requirements of this chapter, and should be continued to be approved to offer educational programs in California. On or before March 15, 1992, the council shall report to the education policy and fiscal committees of the Legislature on the results of this review.

All institutions operating in California on December 31, 1990, pursuant to prior authority of subdivision (a) or (b) of former Section 94311, shall receive approval from the council for a period not to exceed three years. On or before June 30, 1994, the council shall work in cooperation with the appropriate state boards or agencies, and with the Federal Aviation Administration, to review each of these institutions to determine whether the institution is in compliance with the requirements of this chapter. It is the intent of the Legislature that the council develop a memorandum of understanding with each of the appropriate state boards or agencies and with the Federal Aviation Administration to delineate the responsibilities of each agency for the approval and monitoring of these private vocational institutions that were operating on December 31, 1990, under the prior authority of subdivisions (a) and (b) of former Section 94311. It is further the intent of the Legislature that these memorandums of understanding be introduced as legislation on or before February 1, 1994, for enactment as amendments to this act. It is the intent of the Legislature that all institutions having a cumulative gross student loan default rate above 40 percent, as determined by the Student Aid Commission, shall be reviewed by the state board and the council on or before February 29, 1992, to determine if these institutions are in compliance with the requirements of this chapter and should continue to be approved to offer educational programs in California.

All institutions operating in California on December 31, 1990, pursuant to the prior authority of subdivision (d) of former Section 94311, shall receive an approval for a period not to exceed three years. On a specified date to be determined by the council on or before December 31, 1993, each institution granted an approval

pursuant to this subdivision, shall file a completed application for reapproval pursuant to this section.

(h) The council may, at its discretion, enter into an agreement for the regulation and oversight of nondegree granting private postsecondary institutions with the Federal Aviation Administration or with the state agency responsible for administering Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code.

The council may enter into a regulatory agreement only when the appropriate agency can demonstrate that its standards and procedures for the review of institutions encompass the standards and consumer protection requirements prescribed by this chapter and that these standards and procedures are rigorously enforced.

Nothing in this section shall modify the existing authority of regulatory agencies within the Department of Consumer Affairs relating to schools or programs.

(i) If at any time the council determines that an institution has deviated from the standards for approval, the council may, after giving the institution due notice and an opportunity to be heard, place the institution on probation for a specified period of time not to exceed 24 calendar months. During the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the council, and special visits by authorized representatives of the council to determine progress toward total compliance. If at the end of the specified probationary period the institution has not taken steps to eliminate the causes for its probation to the satisfaction of the council, the council may revoke the institution's approval and provide notice to the institution to cease its operations.

(j) Approval by the council under Section 94311 shall be required for all colleges and universities offering courses to veterans through the veteran educational benefit program.

SEC. 6.3. Section 94311.4 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended and renumbered to read:

94311.3. The council may utilize the resources of accrediting associations in gathering information about accredited postsecondary and vocational institutions, including participating as an observer on accreditation site visits. However, this does not preclude or relieve the council of its responsibilities under the provisions of this chapter and the council shall retain full authority for approving all private postsecondary and vocational institutions operating in California.

SEC. 6.5. Section 94311.5 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended and renumbered to read:

94311.4. (a) The review of a private postsecondary educational institution's original application for approval, or a renewal

application to the council, or an approved institution already in operation, shall include a determination of the institution's financial responsibility. An institution shall be considered financially responsible if it has sufficient assets for all of the following:

(1) To provide the educational services stated in its official publications and statements.

(2) To comply with the standards and requirements specified in Sections 94310 and 94311.

(3) To provide the administrative and financial resources to fully comply with Section 94312.

(b) An institution shall not be considered financially responsible under any of the following conditions:

(1) The institution, under generally accepted accounting principles, has had operating losses in, at a minimum, the two most recent years.

(2) Under generally accepted accounting principles, the institution had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1.25 to 1.

(3) Under a fund accounting system, the institution's unrestricted current or operating fund reflects sustained material deficits over at least its two most recent fiscal years.

(4) The institution is not in compliance either with the regulations adopted by the council or with any existing statutes relating to the requirements for maintaining sufficient funds to cover all operating expenses.

(c) If the council determines that an institution is not financially responsible, the council may, under terms and conditions prescribed by the council, require the institution to submit for its latest complete fiscal year and its current fiscal year, each of the following:

(1) A financial audit of the institution conducted by a licensed certified public accountant, in accordance with generally accepted auditing standards.

(2) The institution's financial plan for establishing financial responsibility.

(3) Any other information requested by the council.

This subdivision shall not prevent the council from taking any other actions authorized under this chapter.

SEC. 6.7. Section 94311.7 is added to the Education Code, to read:

94311.7. No person shall own or operate a school, or give instruction, for the driving of motor trucks of three or more axles which are more than 6,000 pounds unladen weight unless all of the following conditions are met:

(a) The school or instruction has been approved by the council.

(b) The school shall, at the time of application and thereafter, maintain both of the following:

(1) Proof of compliance with liability insurance requirements that are the same as those established by the Department of Motor Vehicles for a driving school owner, pursuant to Section 11103 of the Vehicle Code, unless the council deems it necessary to establish a

higher level of insurance coverage.

(2) A satisfactory safety rating by the Department of the California Highway Patrol is established pursuant to Division 14.8 (commencing with Section 34500) of the Vehicle Code.

(c) The driving instructors meet the requirements set forth in Section 11104 of the Vehicle Code.

(d) All vehicles used in driver training are maintained in safe mechanical condition at all times.

(e) Any other terms and conditions required by the council to protect the public safety or to meet the requirements of this chapter.

SEC. 7. Section 94312 of Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94312. All institutions approved under this chapter shall be maintained and operated, or in the case of a new institution, shall demonstrate that it will be maintained and operated, in compliance with all of the following minimum standards:

(a) That the institution is financially capable of fulfilling its commitments to its students.

(b) That the institution and its agents do not utilize advertising of any type which is false or misleading, either by actual statement, omission, or intimation.

(c) That the institution designates an agent for service of process within this state.

(d) That the institution has and maintains the following specified policy for the refund of the unused portion of tuition fees and other charges in the event the student does not register for the period of attendance or withdraws therefrom at any time prior to completion of the courses, or otherwise fails to complete the period of enrollment. The institutional refund policy for students who have completed 60 percent or less of the course of instruction shall be a pro rata refund. Except as provided in paragraph (1), the refund shall be the amount the student paid for the instruction multiplied by a fraction, the numerator of which is the number of hours of instruction or the number of lessons in a home study or correspondence course which the student has not received but for which the student has paid, and the denominator of which is the total number of hours of instruction or the number of lessons in a home study or correspondence course for which the student has paid.

(1) The institution shall, for all students, without penalty or obligation, refund 100 percent of the amount paid for institutional charges, less a reasonable deposit or application fee not to exceed one hundred dollars ($100), if notice of cancellation is made prior to or on the first day of instruction. If the first lesson in a home study or correspondence course is sent to the student by mail, the institution shall send it by first-class mail, postage prepaid, documented by a certificate of mailing, and the student shall have the right to cancel until midnight of the eighth business day after the first lesson was mailed. The institution shall advise each student that any notification of withdrawal or cancellation and any requests for a refund must be

made in writing.

(2) The institution shall provide a written statement containing its refund policy, together with examples of the application of the policy, to each student prior to signing the enrollment contract, and shall make its policy known to currently enrolled students.

(3) Institutions shall pay or credit refunds due on a reasonable or timely basis, not to exceed 30 days following the date upon which the student's withdrawal has been determined.

(4) Each institution shall publish a current schedule of all student charges, a statement of the purpose for those charges, and a statement of the cancellation and refund policies with examples of the application of the policies, and shall provide the schedule to all current and prospective students prior to enrollment. The schedule shall clearly indicate and differentiate all mandatory and optional student charges. The institution shall include a clear statement written in English describing the procedures that a student must follow to cancel the contract or agreement and obtain a refund. If the institution solicited the student or negotiated the agreement in a language other than English, the notice to the student shall be in that same language. The schedule shall specify the total costs of attendance which shall include, but not be limited to, tuition, fees, equipment costs, housing, transportation, books, necessary supplies, materials, shop and studio fees, and any other fees and expenses that the student will incur upon enrollment.

The schedule shall clearly identify all charges and deposits that are nonrefundable.

(5) The council shall determine the details of the other refund policy through regulations and shall take into consideration the contract for educational services entered into with the student, as well as the length and character of the educational program in determining standards for refunds. The decision of the council shall be final.

(e) That any written contract or agreement signed by a prospective student will not become operative until the student makes an initial visit to the institution or attends the first class or session of instruction. The school officials are obligated to provide the student with a thorough tour of the campus facilities and to place a written statement, signed by the student, in the student's file to verify that the visitation and campus tour were provided. This provision does not apply to correspondence schools or other distance learning programs.

(f) That any written contract or agreement for educational services with an institution shall include each of the following:

(1) On the first page of the agreement or contract, in 12-point boldface print or larger, the following statement:

"Any questions or problems concerning this school which have not been satisfactorily answered or resolved by the school should be directed to the Council for Private Postsecondary Education, Sacramento, California 95814."

(2) In underlined capital letters on the same page of the contract or agreement in which the student's signature is required, the total amount that the student is obligated to pay for the course of instruction and all other services and facilities furnished or made available to the student by the school, including any charges made by the school for tuition, room and board, books, materials, supplies, shop and studio fees, and any other fees and expenses that the student will incur upon enrollment.

(3) A list of any charges and deposits that are nonrefundable clearly identified as "nonrefundable" charges.

(4) A written statement signed by a representative of the institution, which certifies that the institution has met all disclosure requirements required by this section and, for institutions participating in state or federal student assistance programs, has met all requirements for the administration of any state financial aid program under Chapter 2 (commencing with Section 69500) of Part 42 or any federal student assistance program under Title IV of the federal Higher Education Act of 1965 (P.L. 89-329), extensions of that act, amendments to that act, and the rules and regulations adopted under that act.

(5) The name and address of the school and the addresses where instruction will be provided.

(6) The name and description of the course of instruction, including the total number of classes, hours, or lessons required to complete the course of instruction.

(7) A clear and conspicuous statement that the agreement or contract is a legally binding instrument when signed by the student and accepted by the school.

(8) A clear and conspicuous caption, "BUYER'S RIGHT TO CANCEL" under which it is explained that the student has the right to cancel the enrollment agreement and obtain a refund, the form and means of notice that the student should use in the event that he or she elects to cancel the enrollment agreement, and the title and address of the school official to whom the notice should be sent or delivered.

(9) A clear statement of the refund policy written in plain English.

(10) The signature of the student under the following statement which is presented in 12-point boldface or larger print: "My signature below certifies that I have read, understood, and agreed to my rights and responsibilities, and that the institution's cancellation and refund policies have been clearly explained to me."

The council shall, in consultation with its appropriate advisory committee, adopt a model contract form that shall be used by each institution. However, if, in the opinion of the council, a contract already in use at a particular institution fulfills all the requirements of this act, the council may approve the contract used by that institution in lieu of the model form.

All contracts and enrollment agreements signed by the student shall be written in language which is capable of being easily

understood. If English is not the primary language spoken by the student, the student shall have the right to obtain a clear explanation of the terms and conditions of the agreement and all cancellation and refund policies in his or her primary language.

(g) That neither the institution nor its agents engage in sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair.

(h) That the institution provides to students and other interested persons, prior to enrollment, a catalog or brochure containing at a minimum the following information:

(1) Descriptions of the instruction provided under each course offered by the institution.

(2) The number of credit hours or clock hours of instruction or training per unit or units required for completion of the educational degree or certificate program.

(3) The attendance, dropout, and leave-of-absence policies.

(4) The faculty and their qualifications.

(5) The schedule of tuition, fees, and all other charges and expenses necessary for the term of instruction and the completion of the course of study.

(6) The cancellation and refund policies.

(7) For institutions which participate in federal and state financial aid programs, all consumer information which the institution is required to disclose to the student.

(8) All other material facts concerning the institution and the program or course of instruction which are reasonably likely to affect the decision of the student to enroll, as prescribed by rules and regulations adopted by the council.

(9) No written contract signed by the student shall be enforceable unless the information specified in this subdivision has been disclosed to the student.

(i) That each institution offering a degree or diploma program designed to prepare students for a particular vocational, trade, or career field shall provide to each prospective student a school performance fact sheet disclosing the following information:

(1) The number and percentage of students who begin the institution's program and successfully complete the entire program. The rate shall be calculated by determining the percentage of students enrolled in the program who were originally scheduled, at the time of enrollment, to complete the program in that calendar year and who successfully completed the program.

(2) The passage rates of graduates in the program for the most recent calendar year that ended not less than six months prior to the date of disclosure on any licensure or certificate examination required by the state for employment in the particular vocational, trade, or career field.

(3) The number and percentage of students who begin the program and secure employment in the field for which they were trained. In calculating this rate, the institution shall consider as not

having obtained employment, any graduate for whom the institution does not possess evidence, documented in his or her file, showing that he or she has obtained employment in the occupation for which the program is offered.

(4) The average annual starting wages or salary of graduates of the institution's program, if the institution makes a claim to prospective students regarding the starting salaries of its graduates, or the starting salaries or local availability of jobs in a field. The institution shall disclose to the prospective student the objective sources of information necessary to substantiate the truthfulness of the claim.

Each school which offers or advertises placement assistance for any course of instruction shall file with the council its placement statistics for the 12-month period or calendar year immediately preceding the date of the school's application for annual review for every course of instruction.

The council shall develop standards and criteria to be used by each institution in determining the statistical information required by this subdivision.

(j) That upon satisfactory completion of training, the student is given an appropriate degree or diploma by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed by the student.

(k) That adequate and accurate records are maintained by the institution, in accordance with regulations adopted by the council, and that satisfactory standards are enforced relating to attendance, progress, and performance.

(*l*) That the institution maintains current records for a period of not less than five years at its principal place of business within the State of California, immediately available during normal business hours, for inspection by the council or the Attorney General of California showing all of the following:

(1) The names and addresses, both local and home, including city and state, of each of its students.

(2) The courses of study offered by the institution.

(3) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.

(4) The degrees or diplomas and honorary degrees and diplomas granted, the date of granting, together with the curricula upon which the diplomas and degrees were based.

(m) That the institution provides instruction as part of its educational program. Instruction shall include any specific, formal arrangement by an institution for its enrollees to participate in learning experiences wherein the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(n) Institutions certified to offer flight instruction by the Federal Aviation Administration, or its successor agency, shall comply with

all of the requirements of this section, but shall not be required to file any materials with the council which are not required by the Federal Aviation Administration, or its successor agency, except those minimally necessary to administer the Student Tuition Recovery Fund, pursuant to Section 94342, as determined by the council. The responsibility for monitoring and enforcing institutional compliance for these institutions shall be with the council.

Individual flight instructors not requiring any advance payments, who do not negotiate a formal contract of indebtedness, and who do not have an established place of business other than their residences shall be exempt from the requirements of this section.

(o) The council shall take into consideration the character of the educational program in determining whether specific types of institutions may be excluded from application of subdivision (i).

SEC. 8. Section 94312.2 of the Education Code is amended to read:

94312.2. Each institution approved to operate under this chapter shall be required to report to the council, by July 1 of each year, or another date designated by the council, the following information for educational programs offered in the prior calendar year:

(a) The total number of students enrolled, by level of degree or type of diploma program, and by gender, ethnicity, and race.

(b) The number of degrees and diplomas awarded, by level of degree, and by gender, ethnicity, and race.

(c) The degree levels offered.

(d) Program completion rates.

(e) Placement data for vocational training programs, unless that data already is required to be provided by the institution under other requirements of this chapter.

(f) The schedule of tuition and fees required for each term, program, course of instruction, or degree offered.

(g) If an institution submits an audited financial statement to the United States Department of Education, the institution shall submit a copy of that financial statement to the council.

(h) Financial information demonstrating compliance with subdivisions (b) and (c) of Section 94316.6.

(i) Institutions having a probationary or conditional status shall submit an annual report reviewing their progress in meeting the standards required for approval status.

(j) Any additional information that the council may prescribe.

(k) Colleges and universities operating under paragraph (5) of subdivision (t) of Section 94302 shall comply with the reporting requirements of subdivisions (a), (b), (c), and (f) of this section.

Program completion rates and placement data shall be reported in accordance with the standards and criteria prescribed by the council pursuant to subdivision (i) of Section 94312 or Section 94316.10, whichever is applicable. Based on the review of information submitted to fulfill the requirements of this section, the council may initiate a compliance review and may place the institution on

probation pursuant to subdivision (e) of Section 94310 and subdivision (i) of Section 94311, and may require evidence of financial stability and responsibility pursuant to Section 94311.5 or 94316.6.

Except as provided in Article 2.5 (commencing with Section 94316), the provisions of this section shall supersede the provisions of any other law which conflict with the provisions of this section.

SEC. 9. Section 94313 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94313. (a) Within 30 days of receiving a written notice described in subdivision (a) or subdivision (c) of Sections 69507.7 and 69509.5 from the Student Aid Commission, the council shall commence an investigation of the institution named in the notice. The purpose of the investigation shall be to determine whether the educational institution is in compliance with this chapter.

(b) Within a reasonable time after the commencement of the investigation required in subdivision (a), the council shall conclude its investigation and take action against the institution involved, as appropriate.

SEC. 10. Section 94315 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94315. (a) No institution may offer education which develops or improves an occupational skill, knowledge, or ability unless the ownership for its statewide operations has filed with the council an annual declaration under penalty of perjury for public disclosure setting forth the following information:

(1) The owner's legal name, headquarters address, and the name of an agent for the service of process within California.

(2) All names, whether real or fictitious, under which the owner is doing and will do business.

(3) The names and addresses of the principal officers of the ownership.

(b) The annual declaration under penalty of perjury shall be accompanied by representative copies of any existing media advertising or promotional material. Institutions filing pursuant to this section shall be exempt from all of the requirements of this chapter, except for those prescribed in subdivision (d) of Section 94320, Section 94321, and Section 94336. Filing pursuant to this section shall not be interpreted to mean, and it shall be unlawful for any institution to expressly or impliedly represent by any means whatsoever, that the State of California, or the Council for Private Postsecondary and Vocational Education, has made any evaluation, recognition, accreditation, approval, or endorsement of the institution or the education offered.

(c) This section does not apply to education with an educational, professional, technological, or vocational objective which is subject to approval pursuant to Section 94311. Institutions or continuing education courses accredited by a national or applicable regional accrediting agency recognized by the United States Department of

Education, or accredited or approved by a California state agency for that education, are exempted from this section. Also exempted from this section are remedial and tutorial education, as determined by the council, any education which is offered at a total charge of less than three hundred dollars ($300) and which makes no employment or job opportunity claims, as determined by the council, and any education offered by nonprofit entities, including national or statewide professional and occupational organizations and public benefit corporations.

SEC. 11. Section 94320 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94320. No institution, or representative of that institution shall:

(a) Operate in this state a postsecondary or vocational educational institution not exempted from this chapter, unless the institution is currently approved to operate pursuant to this chapter.

(b) Offer, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, an institution not exempted from this chapter, whether that institution is within or outside this state, unless that agent is a natural person and has a currently valid agent's permit issued pursuant to this chapter, nor accept contracts or enrollment applications from an agent who does not have a current permit as required by this chapter, provided, that the council may adopt rules and regulations to permit the rendering of legitimate public information services without a permit.

(c) Instruct or educate, or offer to instruct or educate, including soliciting for those purposes, enroll or offer to enroll, contract or offer to contract with any person for that purpose, or award any educational credential, or contract with any institution or party to perform any act, in this state, whether that person, agent, group, or entity is located within or without this state, unless that person, agent, group, or entity observes and is in compliance with the minimum standards set forth in Section 94312 or Article 2.5 (commencing with Section 94316), whichever is applicable, the criteria established by the council pursuant to subdivision (b) of Section 94305, and the rules and regulations adopted by the council pursuant to subdivision (d) of Section 94305.

(d) Use, or allow the use of, any reproduction or facsimile of the Great Seal of the State of California on any diploma.

(e) Make, or cause to be made, any statement, or representation, oral, written, or visual, in connection with the offering or publicizing of a course, if that person, firm, association, partnership, or corporation knows, or reasonably should have known, the statement or representation to be false, deceptive, inaccurate, or misleading.

(f) Promise or guarantee employment.

(g) Advertise concerning job availability, degree of skill and length of time required to learn a trade or skill unless the information is accurate and in no way misleading.

(h) Advertise, or indicate in any promotional material, that correspondence instruction, or correspondence courses of study are

offered without including in all advertising or promotional material the fact that the instruction or courses of study are offered by correspondence or home study.

(i) Advertise, or indicate in any promotional material, that resident instruction, or courses of study are offered without including in all advertising or promotional material the location where the training is given or the location of the resident instruction.

(j) Solicit students for enrollment by causing any advertisement to be published in "help wanted" columns in any magazine, newspaper, or publication or use "blind" advertising which fails to identify the school or institution.

(k) Advertise, or indicate in any promotional material, that the institution is accredited, unless the institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the United States Department of Education or the Committee of Bar Examiners of the State of California.

(*l*) State or imply that the council's grant to the institution of approval to operate indicates that the institution exceeds minimum state standards, or that the council or the state endorses or recommends the institution.

(m) Fail to comply with federal requirements relating to the disclosure of information to students regarding vocational and career training programs, as described in subdivision (i) of Section 94312.

SEC. 12. The heading of Article 5 (commencing with Section 94330) of Chapter 3 of Part 59 of the Education Code is amended and renumbered to read:

Article 4. Applications and Causes for Denial

SEC. 12.5. Section 94330 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94330. (a) Each institution desiring to operate in this state shall make application to the council, upon forms to be provided by the council. The application shall include, as a minimum, at least the following:

(1) A catalog published or proposed to be published by the institution containing the information specified in the criteria adopted by the council. The catalog shall include specific dates as to when the catalog applies.

(2) A description of the institution's placement assistance, if any.

(3) Copies of media advertising and promotional literature.

(4) Copies of all student enrollment agreement or contract forms and instruments evidencing indebtedness.

(5) Copies of participation agreements for state and federal financial aid programs.

(6) The name and California address of a designated agent upon whom any process, notice, or demand may be served.

(7) The information specified in Section 94312.2.

(8) The institutions most current profit and loss statement and

current balance sheet, or an audit prepared by a licensed certified public accountant in accordance with generally accepted auditing standards.

(b) Each application shall be signed and certified under oath by the owners of the school, or where the school is incorporated, by the principal owners of the school (those who own at least 10 percent of the stock), or by the governing body of a nonprofit school.

(c) Following review of the application and any other further information submitted by the applicant, or required in conformity with Sections 94310 and 94311, and any investigation of the applicant as the council may deem necessary or appropriate, the council shall either grant or deny approval to operate to the applicant.

(d) The council shall review and investigate all institutions and courses of instruction approved under this chapter. Consideration in the scheduling of reviews and investigations shall be afforded to student complaints and information collected by the Attorney General, the Student Aid Commission, any board within the Department of Consumer Affairs, or any other federal, state, or local agency.

(e) The approval to operate shall be issued to the owner or the governing body of the applicant institution, and shall be nontransferable. Any person, partnership, or corporation that makes a proper application and complies with this chapter and each standard, rule, and regulation pertaining to this chapter shall be qualified to receive an approval to operate or an approval of the transfer of ownership.

(f) In the event that a shift in control or change of ownership of an institution occurs, an application for a new approval to operate for the institution under the changed ownership or control shall be filed with the council at least 20 days prior to the shift in control or change in ownership. Whenever an owner, partnership, or corporation operates an institution at different locations, an application for approval shall be filed for each location.

(g) No application for ownership or transfer of ownership shall be approved for any applicant that has been previously found in any judicial or administrative proceeding to have violated this chapter, or if there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.

(h) No change in ownership of the institution shall be made until the application is approved. If an application for a new approval to operate is not timely filed as required by this section, the institution's approval to operate shall terminate. Upon approval of a change in ownership, the council shall give written notice to the Student Aid Commission.

(i) For the purposes of this section, a change in ownership occurs when there is a change of control of the institution, or where a person, partnership, or corporation which did not previously own at least 25 percent of the stock or controlling interest of an institution or its parent corporation, acquires ownership of at least 25 percent

of the stock of the institution or its parent corporation.

(j) At least 60 days prior to the expiration of an approval to operate, the institution shall complete and file with the council an application form for renewal of its approval to operate. The renewal application shall be reviewed and acted upon as provided in this section.

(k) The council may refuse to issue or renew any private postsecondary or vocational educational institution's approval to operate, or may revoke any approval to operate for any one, or any combination, of the following causes:

(1) A violation of this chapter, or any standard, rule, or regulation established under this chapter.

(2) Furnishing false, misleading, or incomplete information to the council, or the failure to furnish information requested by the council or required by this chapter.

(3) A finding that an owner, person in control, director, or officer of an institution is not in compliance with Section 94311.5, 94316.6, or 94316.8, whichever are applicable.

(4) A finding that a signatory to an application for an approval to operate was responsible for the closure of any institution in which there were unpaid liabilities to the state or federal government, or uncompensated pecuniary losses suffered by students without restitution.

(5) The failure of the institution to maintain the minimum educational standards prescribed by this chapter, or to maintain standards which are the same as, or substantially equivalent to, those represented in the school's applications and advertising.

(6) Presenting to prospective students information which is false or misleading relating to the school, to employment opportunities, or to enrollment opportunities in institutions of higher learning after entering into or completing courses offered by the school.

(7) The failure to maintain financial resources adequate for the satisfactory conduct of the courses of instruction offered as required by statute.

(8) The failure to provide timely and correct refunds to students.

(9) Paying a commission or valuable consideration to any persons for acts or services in violation of this chapter.

(10) Attempting to confer a degree, diploma, or certificate to any student in violation of this chapter.

(11) Misrepresenting to any students or prospective students that they are qualified, upon completion of any course, for admission to professional examination under any state occupational licensing provision.

(12) The failure to correct any deficiency or act of noncompliance under this chapter, or the standards, rules, regulations, and orders established and adopted under this chapter within reasonable time limits set by the council.

(13) The conducting of business or instructional services at any location not approved by the council.

(14) Failure on the part of an institution to comply with provisions of law or regulations governing sanitary conditions of that institution specified in Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000) of the Business and Professions Code.

If there is reasonable cause to believe that there has been a violation by a private postsecondary or vocational educational institution of the standards prescribed by this chapter, the council shall conduct an investigation of the institution.

(*l*) Proceedings in connection with the denial of an application to operate or the revocation of an approval to operate shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the council shall have all of the powers granted in that chapter. Any action by the council to place an institution on probation, shall be subject to appeal to the full council, and the council shall establish procedures which provide the institution with adequate notice and an opportunity to be heard and to present evidence as to why the action recommended by staff or by a visiting committee shall not be taken.

(m) Upon taking any action to suspend or revoke an institution's approval to operate, the council shall provide written notice to the Student Aid Commission and to any appropriate accrediting association.

(n) A college or university operating under paragraph (5) of subdivision (t) of Section 94302 shall annually file with the council evidence to demonstrate its status as a nonprofit religious corporation under the Corporations Code.

SEC. 13. The heading of Article 6 (commencing with Section 94331) of Chapter 3 of Part 59 of the Education Code is amended and renumbered to read:

Article 5. Fees

SEC. 13.5. Section 94331.5 of the Education Code is amended to read:

94331.5. Until the council establishes the fee schedule required by Section 94331, the following fee schedule shall govern the fees to be paid by private institutions operating under this chapter:

(a) For an approval to issue specified degrees pursuant to Section 94310:

(1) Four thousand five hundred dollars ($4,500) for an institution's original application.

(2) An amount not to exceed two thousand five hundred dollars ($2,500) for an institution's annual fee.

(3) Two thousand five hundred dollars ($2,500) for an institution's additional degree title.

(4) Four thousand five hundred dollars ($4,500) for a change of ownership.

(5) Three hundred dollars ($300) for a change of location.

(b) For an approval to issue diplomas or offer courses pursuant to Section 94311:

(1) (A) One thousand dollars ($1,000) for a new institution.

(B) Five hundred dollars ($500) for a new institution of an administrative family.

(C) Four hundred twenty-five dollars ($425) for a new institution of a nonprofit public benefit corporation, organized pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, if that education is limited to instruction in employment and skill training and if it is offered at no charge to those persons receiving that education.

(2) One thousand two hundred dollars ($1,200) for an institution's annual fee if the institution does not participate in publicly funded student financial assistance programs and enrolls more than 150 students each year. Six hundred dollars ($600) for an institution's annual fee if the institution does not participate in publicly funded student financial assistance programs and enrolls 150 or fewer students each year. Two thousand five hundred dollars ($2,500) for an institution's annual fee if the institution does participate in publicly funded student financial assistance programs and enrolls more than 150 students each year. One thousand six hundred dollars ($1,600) for an institution's annual fee if the institution does participate in publicly funded student financial assistance programs and enrolls 150 or fewer students each year.

(3) One thousand dollars ($1,000) for an institution's change of ownership.

(4) Two hundred fifty dollars ($250) for an institution's change of location.

(c) For a filing by an ownership to offer career-related education pursuant to Section 94315: seven hundred dollars ($700) for an original filing, and two hundred seventy dollars ($270) for an annual fee.

(d) For a private school agent's permit pursuant to Section 94333: one hundred dollars ($100) for an original application, and fifty-one dollars ($51) for an annual fee, per applicant.

(e) For agencies with three or fewer employees:

(1) Seven hundred fifty dollars ($750) for an original application.

(2) Five hundred dollars ($500) for the agency's annual fee.

(3) Five hundred dollars ($500) for the agency's change of ownership.

(f) For agencies with four or more employees:

(1) One thousand five hundred dollars ($1,500) for an original application.

(2) One thousand dollars ($1,000) for the agency's annual fee.

(3) One thousand dollars ($1,000) for the agency's change of ownership.

(g) For purposes of this section, "administrative family" is a designation granted by the council to two or more institutions under

common ownership, if the ownership maintains centralized administration, records, and reporting at one California location, and has at least a five-year history of private postsecondary education operations in California.

(h) For evaluation of an applicant for a certificate of authorization for service, issued pursuant to paragraph (3) of subdivision (a) of Section 94311, the original and renewal applications for a three-year authorization shall be accompanied by a fifty-five dollar ($55) fee.

(i) Any institution more than 30 days delinquent in the payment of any fee may be assessed a penalty fee by the council. The council shall determine the penalty fees through regulations.

SEC. 14. Section 94333 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94333. (a) Notwithstanding any other provision of this chapter concerning agents, the owner of at least 51 percent of the equitable interest in an institution shall be exempt from this section if the institution is approved to operate pursuant to Section 94310 or 94311.

No person may act as an agent, as defined by subdivision (d) of Section 94302, unless that person holds a valid permit issued by the council and maintains at all times a surety bond as described in paragraph (2). Administrators or faculty, or both, who make informational public appearances, but whose primary task is not to serve as a paid recruiter, are exempted from this section.

The application for a permit shall be furnished by the council and shall include the following:

(1) A statement signed by the applicant that he or she has read the provisions of this chapter and the rules and regulations promulgated pursuant thereto.

(2) A surety bond issued by an admitted surety insurer in favor of the State of California for the indemnification of any person for any loss suffered as a result of the occurrence, during the period of coverage, of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as a result of any violation of this chapter. The term of the bond shall extend over the period of the permit. The bond may be supplied by the institution or by the person for whom the issuance of the permit is sought and may extend to cover individuals separately or to provide blanket coverage for all persons to be engaged as representatives of the institution. The bond shall provide for liability in the penal sum of twenty-five thousand dollars ($25,000) for each agent to whom coverage is extended by its terms. Neither the principal nor surety on a bond may terminate the coverage of the bond, except upon giving 30 days' prior written notice to the council, and contemporaneously surrendering the agent's permit. Liability on the bond may be enforced after a hearing before the council, after 30 days advance written notice to the principal and surety. The council shall adopt regulations establishing the procedure for administrative enforcement of liability. This paragraph supplements, but does not supplant, any other rights or remedies to enforce

liability on the bond.

(3) A fee as required by Section 94331.

(b) An agent representing more than one institution shall obtain a separate agent's permit and bond for each institution represented.

(c) No person shall be issued a permit if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter, or there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.

(d) A permit shall be valid for the calendar year in which it is issued, unless sooner revoked or suspended by the council for fraud or misrepresentation in connection with the solicitation for the sale of any course of study, for any violation of this chapter, or for the existence of any condition in respect to the permittee or the school he or she represents which, if in existence at the time the permit was issued, would have been grounds for denial of the permit.

(e) The permittee shall carry the permit with him or her for identification purposes when engaged in the solicitation of sales and the selling of courses of study away from the premises of the school, and shall produce the permit for inspection upon the request of any person.

(f) Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply to any determination of the council made pursuant to this section.

(g) The issuance of a permit pursuant to this section shall not be interpreted as, and it shall be unlawful for any individual holding any permit to expressly or impliedly represent by any means whatever, that the council has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the individual.

(h) It shall be unlawful for any individual holding a permit under this section to expressly or impliedly represent, by any means whatsoever, that the issuance of the permit constitutes an assurance by the council that any course of study being offered for sale by the individual will provide and require of the student a course of education or training necessary to reach a professional, educational, or vocational objective, or will result in employment or personal earnings for the student.

(i) No agent shall make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are false, deceptive, misleading, or unfair.

(j) The council shall maintain records for five years of each application for a permit, each bond, and each issuance, denial, termination, suspension, and revocation of a temporary permit or permit.

(k) A student may bring an action for an agent's violation of this chapter or any fraud or misrepresentation and, upon prevailing, shall be entitled to the recovery of damages, reasonable attorney's fees, and costs. If a court finds that the violation was willfully committed, the court shall, in addition to the award of damages, award a civil

penalty of up to two times the amount of damages sustained by the student.

(*l*) Any person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding five thousand dollars ($5,000), or by both.

SEC. 15. Section 94334 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94334. (a) Except as provided in subdivision (g), any agency, as defined by subdivision (b) of Section 94302, shall be required to hold a valid authorization issued by the council. The application for an authorization shall include all of the following:

(1) A current financial statement prepared by a California licensed certified public accountant who is not an employee, officer, or director of the institution.

(2) Evidence of a surety bond issued in favor of the State of California by an admitted surety insurer making provision for indemnification of any person for any loss suffered as a result of the occurrence, during the period of coverage, of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as a result of any violation of this chapter. The term of the bond shall extend over the period of the authorization. The bond shall provide for liability in the penal sum of two hundred fifty thousand dollars ($250,000) for each agency to which coverage is extended by its terms. Neither the principal nor surety on a bond may terminate the coverage of the bond except upon giving 30 days' prior written notice to the council, and upon contemporaneously surrendering the agency's authorization to operate. Liability on the bond may be enforced after a hearing before the council, after 30 days advance written notice to the principal and surety. The council shall adopt regulations establishing the procedure for administrative enforcement of liability. This paragraph supplements, but does not supplant, any other rights or remedies to enforce liability on the bond.

(3) A copy of the student disclosure statement to be read and signed by all prospective students referred to institutions by an agency. The student disclosure statement shall include, but shall not be limited to, all of the following:

(A) A statement to the effect that no promise of employment has been made by the agency.

(B) A statement to the effect that repayment of any debt incurred by a student in connection with his or her education will be the sole responsibility of the student.

(C) The amount and terms of any fee to be paid by the student to the agency.

(D) A verbatim statement, as follows:

Any questions or problems concerning this agency should be directed to the Council for Private Postsecondary and Vocational Education, Sacramento, California 95814.

(E) A statement to the effect that the institution or institutions to which the prospective student is referred by the agency have the obligation to make available to the student a catalog or brochure containing information describing all of the following:

(i) The courses offered.

(ii) Program objectives.

(iii) Length of program.

(iv) The faculty and their qualifications.

(v) Schedule of tuition, fees, and all other charges and expenses necessary for the completion of the course of study.

(vi) Cancellation and refund policies.

(vii) Total cost of tuition over the period needed to complete the student's education.

(viii) For vocational training programs, placement data, including program completion rates, placement rates, and starting salaries.

(ix) Other material facts concerning the institution and the program or course of instruction that are reasonably likely to affect the decision of the student to enroll in the institution.

(4) Identification of all employees of the agency and their titles, and of all agents with whom the agency contracts.

(5) Identification of all owners and if the entity is a corporation of the identification of all persons possessing an interest equal to, or in excess, of 10 percent.

(6) Identification of all vendors of educational services for which the agency provides recruitment services.

(7) A signed statement by the applicant that all employees engaged in recruitment activities will be required to read Sections 94320 and 94321 and, if the institution for which the agency recruits is subject to Article 2.5 (commencing with Section 94316), Sections 94316.3 and 94316.4.

(b) Within 30 days of receipt of a completed application and prior to issuance of an authorization a representative of the council shall inspect the applicant agency and verify the application. Within 30 days of the inspection the council shall issue the authorization for a one-year period, subject to annual renewal at the end of that period, or deny the application. The council shall deny the authorization if the agency or any owner, officer, or director of the agency has previously been found in any judicial or administrative proceeding to have violated this chapter, or if there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.

(c) Any employee of an authorized agency engaged in student recruitment activities of an authorized agency is exempt from the bond requirements of Section 94333.

(d) Neither the agency nor any of its employees shall make any untrue or misleading statement in the course of any solicitation or recruitment activity or engage in the sales, collection, credit, or other practices of any type that are false, deceptive, misleading, or unfair.

(e) An agency or an employee of an agency shall provide a prospective student with the disclosure statement described in

paragraph (3) of subdivision (a) and shall allow the prospective student a sufficient opportunity to read it before soliciting or recruiting him or her for enrollment or referring him or her to an institution. That disclosure statement shall be printed in 10-point type in English and, if the solicitation, recruitment, or referral is to be conducted in language other than English, in that other language.

(f) Any institution approved under this chapter shall cease any and all recruitment activities involving the agency upon action by the council to revoke or deny an agency authorization. Failure of the institution to do so upon presentation of notice of the council's action shall be cause to deny or revoke any approval held by that institution.

(g) This section shall not apply to any agency recruiting solely for institutions described in Section 94310.

(h) The council shall maintain records for five years of each application for an authorization, each verification by the council of an application, each bond, and each denial, issuance, and revocation of an authorization.

(i) A student may bring any action against any agency if the agency or an employee of the agency violates this chapter or commits any fraud or misrepresentation and, upon prevailing, shall be entitled to the recovery of damages, reasonable attorney's fees, and costs. If a court finds that the violation was willfully committed, the court shall, in addition to the award of damages, award a civil penalty of up to two times the amount of damages sustained by the student.

(j) Any person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both.

SEC. 15.5. Section 94336 of the Education Code is amended to read:

94336. (a) Any person or business entity, regardless of the form of organization, that willfully violates Section 94312 or 94320 is guilty of a crime and shall be subject to separate punishment for each violation either by imprisonment in the county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or by both, or by imprisonment in the state prison, by a fine not exceeding fifty thousand dollars ($50,000), or by both.

(b) Notwithstanding any other law, any prosecution under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the prosecution.

(c) The penalties provided by this section supplement, but do not supplant, the remedies and penalties provided under other law.

SEC. 16. Section 94342 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94342. (a) The council shall establish and maintain a Student Tuition Recovery Fund, with a degree-granting postsecondary educational institution account and a vocational educational institution account, for the purpose of relieving or mitigating

pecuniary losses suffered by any California resident who is a student of an approved institution and who meets either of the following conditions:

(1) The student was enrolled in an institution prior to the institution's closure, prepaid tuition, and suffered loss as a result of (A) the closure of the institution, (B) the institution's breach or anticipatory breach of the agreement for the course of instruction, or (C) a decline in the quality or value of the course of instruction within the 30-day period before the institution's closure or, if the decline began before that period, the period of decline determined by the council. For the purpose of this section "closure" includes closure of a branch or satellite campus, the termination of either the correspondence or residence portion of a home study or correspondence course, and the termination of a course of instruction for some or all of the students enrolled in the course before the time these students were originally scheduled to complete it, or before a student who has been continuously enrolled in a course of instruction has been permitted to complete all the educational services and classes that comprise the course.

(2) The student obtained a judgment against the institution for any violation of this chapter and the student certifies that the judgment cannot be collected after diligent collection efforts.

(b) Payments from the fund to any student shall be made from the appropriate account with the fund, as determined by the type of institution into which the student has paid his or her fees, and shall be subject to any regulations and conditions as the council shall prescribe.

(c) (1) The institution shall provide to the council at the time of the institution's closure the names and addresses of persons who were students of an institution within 60 days prior to its closure, and shall notify these students, within 30 days of the institution's closure, of their rights under the Student Tuition Recovery Fund and how to apply for payment. If the institution fails to comply with this subdivision, the council shall attempt to obtain the names and addresses of these students and shall notify them, within 90 days of the institution's closure, of their rights under the Student Tuition Recovery Fund and how to apply for payment.

The council shall develop a form in English and Spanish fully explaining a student's rights, which shall be used by the institution or the council to comply with this paragraph. The form shall include or be accompanied by a claim application and an explanation of how to complete the application.

(2) If an institution fails to comply with paragraph (1), the council shall order the institution, or any person responsible for the failure to provide notice as required by paragraph (1), to reimburse the council for all reasonable costs and expenses incurred in notifying students as required in paragraph (1). In addition, the council may impose a penalty of up to five thousand dollars ($5,000) against the institution and any person found responsible for the failure to

provide notice. The amount of the penalty shall be based on the degree of culpability and the ability to pay. Any order may impose joint and several liability. Before any order is made pursuant to this paragraph, the council shall provide written notice to the institution and any person from whom the council seeks recovery of the council's claim and of the right to request a hearing within 30 days of the service of the notice. If a hearing is not requested within 30 days of service of the notice, the council may order payment in the amount of the claim. If a hearing is requested, the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code apply, and the council shall have all of the powers therein-prescribed. Within 30 days after the effective date of the issuance of an order, the council may enforce the order in the same manner as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 1 of the Code of Civil Procedure. All penalties and reimbursements paid pursuant to this section shall be deposited in the Private Postsecondary Education Administration Fund established pursuant to Section 94331 or any successor fund.

(d) (1) Students entitled to payment as provided in paragraph (1) of subdivision (a) shall file with the council a verified application indicating each of the following:

(A) The student's name, address, telephone number, and social security number.

(B) If any portion of the tuition was paid from the proceeds of a loan, the name of the lender and any state or federal agency that guaranteed or reinsured the loan.

(C) The amount of the prepaid tuition, the amount and description of the student's economic loss, and the amount of the student's claim.

(D) The date the student started and ceased attending the institution.

(E) A description of the reasons the student ceased attending the institution.

(F) If the student ceased attending because of a breach or anticipatory breach or because of the decline in the quality or value of the course of instruction as described in subparagraph (C) of paragraph (1) of subdivision (a), a statement describing in detail the nature of the economic loss incurred. The application shall be filed within one year of the council's service on the student of the notice described in paragraph (1) of subdivision (c) or, if no notice is served, within four years of the institution's closure.

(2) Students entitled to payment as provided in paragraph (2) of subdivision (a) shall file with the council a verified application indicating the student's name, address, telephone number, and social security number, the amount of the judgment obtained against the institution, a statement that the judgment cannot be collected, and a description of the efforts attempted to enforce the judgment. The application shall be accompanied by a copy of the judgment and any

other documents indicating the student's efforts made to enforce the judgment.

The application shall be filed within two years after the date upon which the judgment became final.

(3) The council may require additional information designed to facilitate payment to entitled students. The council shall relieve a student from the requirement to provide all of the information required by this subdivision if the council has the information or the information is not reasonably necessary for the resolution of a student's claim.

(e) Within 60 days of the council's receipt of a completed application for payment, the council shall pay the claim from the Student Tuition Recovery Fund or deny the claim. The council may, for good cause, extend the time period for up to an additional 90 days to investigate the accuracy of the claim.

(f) If the council pays the claim, the amount of the payment shall be the total amount of the student's economic loss, notwithstanding the amount of the refund to which the student would have been entitled after a voluntary withdrawal, although the amount of the payment shall in no event exceed the amount of the student's tuition and the cost of equipment and materials related to the course of instruction plus interest on all student loans used to pay for tuition, equipment, and materials. Upon payment of the claim, the council shall be subrogated to all of the student's rights against the institution to the extent of the amount of the payment.

(g) If the council denies the claim, the council shall notify the student of the denial and of the student's right to request a hearing within 60 days or any longer period permitted by the council. If a hearing is not requested within 60 days or any additional period reasonably requested by the student, the council's decision shall be final. If a hearing is requested, the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply.

It is the intent of the Legislature that, when a student is enrolled in an institution that closes prior to the completion of the student's program, the student shall have the option for a teach-out at another institution approved by the council. The council shall seek to promote teach-out opportunities wherever possible, with the student to be informed by the council that he or she has the option of either a payment from the fund or a teach-out.

(h) This section applies to all claims filed or pending after January 1, 1990.

SEC. 17. Section 94344 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94344. (a) The governing board or other governing authority of any private California postsecondary or vocational educational institution shall adopt regulations providing for the withholding of institutional services from students or former students who have been notified, in writing, at the student's or former student's last

known address, that he or she is in default on a loan or loans under either of the following loan programs:

(1) The Stafford Student Loan program.

(2) The Supplemental Loans for Students program.

"Default," as used in this section, means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days for a loan repayable in monthly installments, or 240 days for a loan repayable in less frequent installments.

(b) The regulations adopted pursuant to subdivision (a) shall provide that the services withheld may be provided during a period when the facts are in dispute and when the student or former student demonstrates to either the governing board or other appropriate governing authority of the institution, or the Student Aid Commission and the appropriate entity or its designee, that reasonable progress has been made to repay the loan or that there exists a reasonable justification for the delay as determined by the institution. The regulations shall specify the services to be withheld from the student and may include, but are not limited to, the following:

(1) The provision of grades.

(2) The provision of transcripts.

(3) The provision of diplomas.

The adopted regulations shall not include the withholding of registration privileges.

(c) When it has been determined that an individual is in default on a loan or loans under either of the loan programs specified in subdivision (a), the Student Aid Commission shall give notice of the default to all institutions through which that individual acquired the loan or loans.

(d) Guarantors, or those who act as their agents or act under their control, who provide information to institutions pursuant to this section, shall defend, indemnify, and hold harmless the governing board or other governing authority of the institutions from action resulting from compliance with this section when the action arises as a result of incorrect, misleading, or untimely information provided to the institution by the guarantors, their agents, or those acting under the control of the guarantors.

SEC. 18. Section 94346 is added to the Education Code, to read:

94346. (a) Commencing on January 31, 1992, and on or before January 31 of each calendar year thereafter, the council shall submit a written report to the Legislature and to the California Postsecondary Education Commission summarizing its activities of the previous calendar year.

(b) Annual reports prepared pursuant to this section shall include, but shall not necessarily be limited to, all of the following:

(1) Timely information relating to the enforcement activities of

the council pursuant to this chapter.

(2) Statistics providing a composite picture of the private postsecondary educational community, including data on how many schools, as classified by subject matter, and how many students there are, within the scope of the activities of the council.

SEC. 19. Section 2.5 of this bill incorporates certain amendments to Section 94302 of the Education Code, as added by Chapter 1307 of the Statutes of 1989 proposed by both this bill and SB 2424. It shall only become operative if (1) both bills are enacted before January 1, 1991, (2) each bill amends Section 94302 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, and (3) this bill is enacted after SB 2424, in which case Section 2 of this bill shall not become operative.

CHAPTER 1480

An act to amend Section 94302 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, relating to postsecondary education.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 94302 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, is amended to read:

94302. As used in this chapter, unless the context requires otherwise:

(a) "Accredited" means that an institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the United States Department of Education, or the Committee of Bar Examiners for the State of California. It shall not include those institutions that have applied for accreditation, or are identified by accrediting associations as candidates for accreditation or have provisional accreditation.

(b) "Agency" means a business entity established for the purpose of recruiting students for enrollment in a private postsecondary or vocational school, as defined in this chapter, and any other business entity engaged in that activity with the exception of the educational institution itself.

(c) "Agency approval" means a written document issued by the Council for Private Postsecondary and Vocational Education authorizing a business entity or an institution to engage in the recruitment of students for enrollment in private postsecondary and vocational institutions approved under this chapter.

(d) "Agent" means any person who, at a place away from the institution's premises or site of instruction, for consideration, solicits,

promotes, advertises, offers, or attempts to secure enrollment for an institution, refers any person to an institution either for enrollment or to receive a solicitation for enrollment, or accepts application fees or admissions fees for education in an institution. Administrators and faculty who make informational public appearances, but whose primary task does not include service as a paid recruiter, are exempted from this definition.

(e) "Agent's permit" means a nontransferable written document issued to an agent pursuant to the provisions of this chapter by the Council for Private Postsecondary and Vocational Education.

(f) "Applicant" means a new institution that has submitted an application but has not been evaluated by the council. An applicant institution shall not enroll students or offer educational services.

(g) "Approval" or "approval to operate" means that the council has determined and certified that an institution meets minimum standards established by the council for integrity, financial stability, and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of students' achievement prior to, during, and at the end of its program. It is the intent of the Legislature that the minimum standards for approval for degree granting institutions established by the council shall not exceed the accreditation standards adopted by the Western Association of Schools and Colleges.

(h) "Branch campus" means any campus, satellite facility, extension classroom, office, or location affiliated with an educational institution, other than the main campus or primary administrative location of the institution, in which students complete, while in residence, all or any part of a program of instruction.

(i) "Candidate" or "candidate for approval" means that a new college or university has been evaluated by the council and is found to comply with the council's minimum standards.

(j) "Certificate of authorization for service" means a written, nontransferable document issued by the council authorizing an individual to be an instructor or administrator in any private vocational educational institution in California which is approved under subdivision (a) of Section 94311.

(k) "Correspondence school" or "home study school" means any institution that provides correspondence lessons for study and completion by a student at a location separate from the institution, including those institutions which offer that instruction by correspondence in combination with in-residence instruction.

(*l*) "Council" means the Council for Private Postsecondary and Vocational Education established pursuant to Section 94304.

(m) "Degree" means any "academic degree" or "honorary degree" or title of any designation, mark, appellation, series of letters or words such as, but not limited to, associate, bachelor, master, doctor, or fellow which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond

the secondary school level or is an honorary title conferred for recognition of some meritorious achievement.

(n) "Diploma" means any "diploma," "certificate," "transcript," "document," or other writing in any language other than a degree which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level.

(o) "Education," or "education services," or "educational program" includes, but is not limited to, any class, course, or programs of training, instruction, or study.

(p) "Institutional approval" means an institution that has been evaluated by the council and has been found to be in compliance with the council's standards.

(q) "Instruction" includes any specific, formal arrangement by an institution or its enrollees to participate in learning experiences in which the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(r) "Out-of-state school" means any private postsecondary or vocational educational institution offering career or job training programs, including both an in-residence institution and a home study institution which has its place of instruction or its principal location outside the boundaries of the state, or which offers or conducts courses of instruction or subjects on premises maintained by the school outside the boundaries of the state, or which provides correspondence or home study lesson materials from a location outside the boundaries of this state, or which evaluates completed lesson materials or otherwise conducts its evaluation service from a location outside the boundaries of this state, or which otherwise offers or provides California students with courses of instruction or subjects through activities engaged in or conducted outside the boundaries of the state.

(s) "Private postsecondary educational institution" or "institution" means any person, firm, association, partnership, or corporation doing business in California by offering to the public for a tuition, fee, or other charge, instructional or educational services or training in any academic, technical, professional, mechanical, business, or industrial occupation, either in the recipient's home, at a designated location, or by mail.

(t) "Private vocational educational institution" means any person, firm, association, partnership, or corporation doing business in California by offering to the public, for a tuition fee, or other charge, career or job training programs in any technical, professional, mechanical, business, or industrial occupation, and issuing diplomas or certificates to individuals who complete that program. The following are not considered to be private postsecondary or vocational educational institutions under this chapter:

(1) Institutions exclusively offering instruction at any or all levels

from preschool through the 12th grade.

(2) Education solely avocational or recreational in nature, and institutions offering this education exclusively.

(3) Education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(5) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, if the education is limited to instructions in the principles of that church or denomination, or to courses offered pursuant to Section 2789 of the Business and Professions Code, and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church or denomination. Institutions operating under the provisions of this paragraph shall offer degrees and diplomas only in the beliefs and practices of the denomination, church, or religion. The enactment of this paragraph expresses legislative intent that the state shall not involve itself in the content of degree programs awarded by any institution operating under the provisions of this paragraph, as long as the institution awards degrees and diplomas only in areas specified in the previous sentence. Institutions operating under the provisions of this paragraph shall not award degrees in any area of physical science. Any degree or diploma granted in any area of study under these provisions must contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area. The enactment of this paragraph is intended to prevent any entity claiming to be a nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, from marketing and granting degrees or diplomas which are represented as being linked to their church or denomination but which, in reality, are degrees in secular areas of study.

(u) "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(v) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, or from or through which, educational services are offered or educational degrees or diplomas are offered or granted.

SEC. 1.5. Section 94302 of the Education Code, as added by

Chapter 1307 of the Statutes of 1989, is amended to read:

94302. As used in this chapter, unless the context requires otherwise:

(a) "Accredited" means that an institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the United States Department of Education, or the Committee of Bar Examiners for the State of California. It shall not include those institutions that have applied for accreditation, or are identified by accrediting associations as candidates for accreditation or have provisional accreditation.

(b) "Agency" means any person or business entity regardless of the form of organization, that employs or in any manner contracts with one or more agents. "Agency" does not include an institution.

(c) "Agency approval" means a written document issued by the Council for Private Postsecondary and Vocational Education authorizing a business entity or an institution to engage in the recruitment of students for enrollment in private postsecondary and vocational institutions approved under this chapter.

(d) "Agent" means any person who, at a place away from the institution's premises or site of instruction, for consideration, solicits, promotes, advertises, offers, or attempts to secure enrollment for an institution, refers any person to an institution either for enrollment or to receive a solicitation for enrollment, or accepts application fees or admissions fees for education in an institution. Administrators and faculty who make informational public appearances, but whose primary task does not include service as a paid recruiter, are exempted from this definition.

(e) "Agent's permit" means a nontransferable written document issued to an agent pursuant to the provisions of this chapter by the Council for Private Postsecondary and Vocational Education.

(f) "Applicant" means a new institution that has submitted an application but has not been evaluated by the council. An applicant institution shall not enroll students or offer educational services.

(g) "Approval" or "approval to operate" means that the council has determined and certified that an institution meets minimum standards established by the council for integrity, financial stability, and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of students' achievement prior to, during, and at the end of its program.

(h) "Branch campus" means any campus, satellite facility, extension classroom, office, or location affiliated with an educational institution, other than the main campus or primary administrative location of the institution, in which students complete, while in physical residence, all or any part of a program of instruction.

(i) "Certificate of authorization for service" means a written, nontransferable document issued by the council authorizing an individual to be an instructor or administrator in any private vocational postsecondary educational institution in California which is approved under subdivision (a) of Section 94311.

(j) "Correspondence school" or "home study school" means any institution that provides correspondence lessons for study and completion by a student at a location separate from the institution, including those institutions which offer that instruction by correspondence in combination with in-residence instruction.

(k) "Council" means the Council for Private Postsecondary and Vocational Education established pursuant to Section 94304.

(*l*) "Course of study" means either a single course or a set of related courses for which a student enrolls.

(m) "Degree" means any "academic degree" or "honorary degree" or title of any designation, mark, appellation, series of letters or words such as, but not limited to, associate, bachelor, master, doctor, or fellow which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level or is an honorary title conferred for recognition of some meritorious achievement.

(n) "Diploma" means any "diploma," "certificate," "transcript," "document," or other writing in any language other than a degree which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level.

(o) "Education," or "education services," or "educational program" includes, but is not limited to, any class, course, or programs of training, instruction, or study.

(p) "Institution" means any private postsecondary educational institution.

(q) "Institutional approval" means an institution that has been evaluated by the council and has been found to be in compliance with the council's standards pursuant to this chapter.

(r) "Instruction" includes any specific, formal arrangement by an institution or its enrollees to participate in learning experiences in which the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(s) "Out-of-state school" means any private postsecondary or vocational educational institution offering career or job training programs, including both an in-residence institution and a home study institution which has its place of instruction or its principal location outside the boundaries of the state, or which offers or conducts courses of instruction or subjects on premises maintained by the school outside the boundaries of the state, or which provides correspondence or home study lesson materials from a location outside the boundaries of this state, or which evaluates completed lesson materials or otherwise conducts its evaluation service from a location outside the boundaries of this state, or which otherwise offers or provides California students with courses of instruction or subjects through activities engaged in or conducted outside the

boundaries of the state.

(t) "Private postsecondary educational institution" means any person, firm, association, partnership, or corporation doing business in California by awarding degrees or by diplomas or offering to the public for a tuition, fee, or other charge, (1) instructional or educational services or training in any academic, technical, professional, mechanical, business, or industrial occupation, either in the recipient's home, at a designated location, or by mail, or (2) career or job training programs in any technical, professional, mechanical, business, or industrial occupation. The following are not considered to be private postsecondary educational institutions under this chapter:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the 12th grade.

(2) Education solely avocational or recreational in nature, and institutions offering this education exclusively.

(3) Education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(5) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, if the education is limited to instructions in the principles of that church or denomination, or to courses offered pursuant to Section 2789 of the Business and Professions Code, and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church or denomination. Institutions operating under the provisions of this paragraph shall offer degrees and diplomas only in the beliefs and practices of the denomination, church, or religion. The enactment of this paragraph expresses legislative intent that the state shall not involve itself in the content of degree programs awarded by any institution operating under the provisions of this paragraph, as long as the institution awards degrees and diplomas only in areas specified in the previous sentence. Institutions operating under the provisions of this paragraph shall not award degrees in any area of physical science. Any degree or diploma granted in any area of study under these provisions must contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area. The enactment of this paragraph is intended to prevent any entity claiming to be a nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination, lawfully operating as a nonprofit religious corporation

pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, from marketing and granting degrees or diplomas which are represented as being linked to their church or denomination but which, in reality, are degrees in secular areas of study.

(u) "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(v) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, or from or through which, educational services are offered or educational degrees or diplomas are offered or granted.

SEC. 2. Section 1.5 of this bill incorporates certain amendments to Section 94302 of the Education Code, as added by Chapter 1307 of the Statutes of 1989 proposed by both this bill and SB 194. It shall only become operative if (1) both bills are enacted before January 1, 1991, (2) each bill amends Section 94302 of the Education Code, as added by Chapter 1307 of the Statutes of 1989, and (3) this bill is enacted after SB 194, in which case Section 1 of this bill shall not become operative.

CHAPTER 1481

An act to amend Sections 19533, 19549.4, 19567, 19605.7, 19605.71, 19605.73, 19606, 19612, 19612.1, 19612.2, and 19614.2 of the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 19533 of the Business and Professions Code is amended to read:

19533. (a) Any license granted to an association other than a fair shall be only for one type of racing, thoroughbred, harness, or quarter horse racing as the case may be, except that the board may, by regulation, authorize the entering of thoroughbred and Appaloosa horses in quarter horse races at a distance not exceeding five furlongs at quarter horse meetings, mixed breed meetings, and fair meetings.

(b) If the board adopts regulations authorizing the entering of thoroughbred and Appaloosa horses in quarter horse races, the regulations shall provide that the association which conducts the meeting shall, as provided in subdivision (b) of Section 19613, pay to the horsemen's organization representing thoroughbred horsemen an amount for administrative expense and services rendered to

horsemen equivalent to 1.5 percent of the amount available to thoroughbred horses for purses, and an amount for a pension plan for backstretch personnel to be administered by that horsemen's organization equivalent to an additional 1 percent of the amount available to thoroughbred horses for purses. The remainder of the portion shall be distributed as purses. The regulations shall also provide that any redistributable money paid to the board pursuant to Section 19641 which is paid to a welfare fund established by a horsemen's organization from races with both thoroughbred and quarter horses be divided pro rata between the two welfare funds based on the number of thoroughbreds and quarter horses in the race. The regulations shall also provide that minor breeds of horses shall make up more than half the number of horses in the race.

SEC. 1.5. Section 19549.4 of the Business and Professions Code, as amended by Section 1 of Chapter 273 of the Statutes of 1989, is amended to read:

19549.4. Notwithstanding Section 19414.5, the board may allocate racing weeks consisting of fewer than five days to an association conducting a meeting pursuant to Section 19549.2, 19549.6, or 19549.9, if the association and the organization representing the horsemen participating in the meeting agree to the allocation.

This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 2. Section 19567 of the Business and Professions Code is amended to read:

19567. (a) Since the purpose of this chapter is to encourage agriculture and the breeding of horses in this state, a sum equal to 10 percent of the first money of every purse won by a California-bred horse at a horserace meeting shall be paid by the licensee conducting the meeting to the breeder of the horse. This section applies to any California-bred standardbred horse that is foaled on or after November 1, 1977, for all races, except the California standardbred sires stakes races.

(b) Notwithstanding subdivision (a), a sum equal to 10 percent of the first and second place money of every purse won by a California-bred Appaloosa or Arabian horse for first or second place at a horserace meeting shall be paid by the licensee conducting the meeting to the breeder of the horse.

(c) This section does not apply to thoroughbred horses or thoroughbred racing.

SEC. 3. Section 19605.7 of the Business and Professions Code, as added by Chapter 131 of the Statutes of 1990, is amended to read:

19605.7. The total percentage deducted from wagers at satellite wagering facilities in the northern zone shall be the same as the deductions for wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section until January 1, 1992. Amounts deducted under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, Arabian, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission, and the amount of actual operating expenses, as determined by the board, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6; in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas; in the case of Arabians, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Arabians; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617; and one-tenth of 1 percent shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition to the distributions specified in subdivision (a) or (b), for thoroughbred and fair meetings only, six-tenths of 1 percent of the total amount handled by each satellite wagering facility shall be allocated to the facility for promotion of that meeting's program. For harness, quarter horse, and mixed breed meetings, 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in Section 19608.2 for promotion of the program at satellite wagering facilities.

(d) In addition to the distributions specified in subdivisions (a), (b), and (c), for thoroughbred meetings, four-tenths of 1 percent of

the total amount handled at each satellite wagering facility shall be allocated to the association providing the racing program to reimburse it for any costs of offsite stabling and vanning which are required pursuant to Section 19535. The amount of the reimbursement payable to an association for offsite stabling shall not exceed the actual cost to the association of maintaining stalls at its racetrack plus the actual costs incurred by the association to provide vanning and transportation of racehorses from offsite stabling facilities to its racetrack.

(e) In addition to the distributions specified in subdivisions (a), (b), and (c), for fair meetings, four-tenths of 1 percent of the total amount handled at each satellite wagering facility shall be allocated to the organization representing racing fairs to reimburse fairs for the actual cost of providing offsite stabling required by the board pursuant to Section 19535. If fairs contract with associations to provide offsite stabling during fair meetings, the cost incurred by fairs shall not exceed the actual cost to the association of maintaining the stalls or the amount of reimbursement funds made available pursuant to this subdivision, whichever is less. In the event of a disagreement between an association and the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting with respect to the actual cost of maintaining stalls, the board, at the request of the association or the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting, shall determine within 60 days the amount of actual costs incurred. For purposes of this subdivision, "actual cost" does not include fixed overhead or administrative expenses which would be incurred by the association in the absence of an agreement to provide offsite stabling during fair meetings.

(f) Any of the promotional funds distributed pursuant to subdivision (c) that are not expended in the year in which they are collected may be expended in the following year. If promotion funds expended in any year exceed the amount collected for that year, the funds expended in the following year shall be reduced by the excess amount.

(g) Any of the stabling and vanning reimbursement funds distributed pursuant to subdivision (d) or (e) that are not expended within 90 days of the end of the meeting at which they are collected shall be reallocated for promotion of the program at satellite wagering facilities, as provided in subdivision (c).

(h) Additionally, for thoroughbred, harness, quarter horse, mixed breed, and fair meetings, thirty-three hundredths of 1 percent of the total amount handled by each satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(i) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 4. Section 19605.71 of the Business and Professions Code, as added by Chapter 131 of the Statutes of 1990, is amended to read:

19605.71. The total percentage deducted from wagers at satellite wagering facilities in the central and southern zone shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section until January 1, 1992. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, Arabian, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission, and the amount of actual operating expenses, as determined by the board, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6; in the case of Appaloosas, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Appaloosas; in the case of Arabians, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Arabians; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency for California-bred thoroughbred racehorses for distribution pursuant to Section 19617; and one-tenth of 1 percent shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition, for thoroughbred meetings and harness, quarter

horse, Appaloosa, mixed breed, or fair meetings, 1 percent shall be distributed to an organization described in Section 19608.2 for promotion of the program at satellite wagering facilities. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year. If promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 5. Section 19605.73 of the Business and Professions Code, as added by Chapter 131 of the Statutes of 1990, is amended to read:

19605.73. Commencing on January 1, 1992, the total percentage deducted from wagers at satellite wagering facilities in all zones shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617, and one-tenth of 1 percent distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, Arabian, mixed breed, or fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission, and 6 percent or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6; in the case of Appaloosas, four-tenths of 1 percent shall be distributed

as breeders' awards to breeders of Appaloosas; in the case of Arabians, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Arabians; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency of California-bred thoroughbred racehorses for distribution pursuant to Section 19617; and one-tenth of 1 percent shall be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition to the distributions specified in subdivisions (a) and (b), for thoroughbred meetings and harness, quarter horse, Appaloosa, mixed breed, or fair meetings, 1 percent of the total amount handled by the satellite wagering facility shall be distributed to an organization described in Section 19608.2 for promotion of the program at satellite wagering facilities. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year. If promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(d) This section shall become operative on January 1, 1992.

SEC. 6. Section 19606 of the Business and Professions Code, as added by Chapter 131 of the Statutes of 1990, is amended to read:

19606. For harness, quarter horse, Appaloosa, Arabian, mixed breed, and fair meetings, the funds remaining after the distribution of the amounts set forth in Sections 19605.7, 19605.71, and 19605.73 shall be distributed 50 percent as commissions to the association which conducts the racing meeting and 50 percent to the horsemen participating in the racing meeting in the form of purses. However, owners' premiums shall be paid from the amount distributed for purses in the same relative percentage as owners' premiums are paid at the racing meeting.

SEC. 7. Section 19612 of the Business and Professions Code is amended to read:

19612. (a) Except as otherwise provided, every association which conducts a quarter horse race meeting shall pay a daily license fee at the following rates based upon its daily conventional and exotic parimutuel handle, excluding wagering at a satellite wagering facility:

Daily Handle	License Fee Rate
$1,000,000 or less	1.5 percent of handle.
$1,000,001 and more	$15,000 plus 10.7 percent of the handle in excess of $1,000,001.

In addition, every association subject to this subdivision shall pay an additional license fee at the rate of 0.75 percent of its daily exotic parimutuel handle, excluding wagering at a satellite wagering facility. However, any harness association or its successor in interest which conducts a harness meeting on a track of one mile or longer shall retain that 0.75 percent as an additional commission. Except as provided in Section 19610.5, no such association shall pay a license fee in excess of 3.04 percent of the daily conventional parimutuel handle and 3.79 percent of the daily exotic parimutuel handle, excluding wagering at a satellite wagering facility.

(b) With respect to quarter horse meetings, all funds remaining from the deductions provided in Sections 19491, 19491.5, and 19610 after distribution of the applicable license fee, shall be distributed 55 percent as commissions and 45 percent as purses. With respect to harness meetings, except for meetings conducted pursuant to Section 19549.2, the funds remaining from deductions provided in Section 19610, after distribution of the applicable license fee, shall be distributed 59.5 percent as commissions and 40.5 percent as purses. For meetings conducted pursuant to Section 19549.2, the funds remaining from deductions provided in Section 19610, after distribution of the applicable license fee, shall be distributed 50 percent as commissions and 50 percent as purses.

(c) Except as otherwise provided, every association which conducts a harness horse race meeting shall pay a daily license fee at the following rates based upon its daily conventional and exotic parimutuel handle, excluding wagering at a satellite wagering facility:

Daily Handle	License Fee Rate
$550,000 or less	2.5 percent of handle.
$550,001 to $750,000	$13,750 plus 5.5 percent of the handle in excess of $550,001.
$750,001 and more	$24,750 plus 4.7 percent of the handle in excess of $750,001.

In addition, every association subject to this subdivision shall pay an additional license fee at the rate of 0.75 percent of its daily exotic parimutuel handle, excluding wagering at a satellite wagering facility. However, any harness association or its successor in interest which conducts a harness meeting on a track of one mile or longer shall retain that 0.75 percent as an additional commission. Except as provided in Section 19610.5, no association shall pay a license fee in excess of 3.8 percent of the daily conventional parimutuel handle,

excluding wagering at a satellite wagering facility, and 4.55 percent of the daily exotic parimutuel handle, excluding wagering at a satellite wagering facility.

(d) Every harness association or any transferee or successor or subsequent transferee or successor of the business or assets of the association which: (1) conducts its racing meeting at the facilities of a county fair or a district agricultural association or (2) conducted its racing meeting in a single continuous period prior to January 1, 1979, and thereafter conducts a split racing meeting, shall pay a daily license fee based upon its daily conventional and exotic parimutuel handle, excluding wagering at a satellite wagering facility, in accordance with the following schedule:

Daily Handle	License Fee Rate
$1,000,000 or less	1.5 percent of handle.
$1,000,001 and more	$15,000 plus 10.7 percent of the handle in excess of $1,000,001.

In addition, every such association shall pay an additional license fee at the rate of 0.75 percent of its daily exotic parimutuel handle, excluding wagering at a satellite wagering facility. Except as provided in Section 19610 5, no such association shall pay a license fee in excess of 3.04 percent of its daily conventional parimutuel handle and 3.79 percent of its daily exotic parimutuel handle, excluding wagering at a satellite wagering facility.

(e) Every association which conducted a quarter horse or Arabian horseracing meeting in the southern zone during the daytime prior to January 1, 1979, and thereafter conducts the meeting at night, shall be entitled to the following license fee adjustment:

For each 1 percent that the association's average daily handle in the 1981 year, during the period from the commencement of the meeting to December 25, falls below its 1980 average daily handle during the same period, the amount of the applicable license fee as set forth in subdivision (a) shall be reduced by 2 percent.

(f) Any association qualified to operate its meetings pursuant to Section 19612.6 shall be entitled to continue to distribute license fees, commissions, and purses as provided by that section.

(g) Notwithstanding subdivision (b), for every association which conducts a quarter horse meeting in the northern zone, the amount remaining after deduction of the state license fee shall be distributed between commissions and purses as agreed to by the association conducting the meeting and the organization representing the horsemen participating at the meeting. Every association conducting a quarter horse meeting in the northern zone may deduct an additional amount up to 1 percent of its conventional and exotic parimutuel pools to be distributed as commissions. The association may also deduct an additional 1 percent from the exotic parimutuel pools to be distributed as commissions and purses as agreed to by the association conducting the meeting and the

organization representing the horsemen participating at the meeting.

SEC. 8. Section 19612.1 of the Business and Professions Code is amended to read:

19612.1. (a) In addition to the amounts otherwise deducted pursuant to this chapter, every association with an average daily handle of more than seven hundred fifty thousand dollars ($750,000) which conducts a harness, quarter, Arabian, or Appaloosa horse meeting may deduct from the total amount handled in daily double, quiniela, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the following percentage ratio: to the association as additional commission, 59.5 percent; to the horsemen as additional purses, 40.5 percent.

(b) From the amount deducted for quarter horse purses under subdivision (a), a sum equal to 25 percent thereof shall be held by the association to be paid as owners' premiums for California breds winning or placing second at the meeting. The premiums shall be distributed within 30 days of the date on which the funds are received by the officially recognized organization designated to administer this subdivision on a prorated percentage basis of first and second moneys earned to persons owning California-bred quarter horses at the time of their wins or places in races having a total purse value equal to or in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund.

The board shall designate the officially recognized organizations representing quarter horse horsemen to administer this subdivision and to distribute premiums. The organizations may, with the approval of the board, make a deduction for expenses not to exceed 10 percent of the total awards fund.

(c) From the amount deducted for Appaloosa and Arabian horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California-bred Appaloosa or Arabian horses winning or placing at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first money earned to persons owning California-bred Appaloosa or Arabian horses at the time of their wins or places in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred Appaloosa or Arabian horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund. The board shall designate the officially recognized organization representing Appaloosa or Arabian horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction

for expenses not to exceed 5 percent of the total awards fund.

(d) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board, the amount of the deduction shall not be changed during the course of the meeting.

(e) In addition to the amounts otherwise deducted pursuant to this section, every harness racing association shall deduct an additional 2 percent of its exotic parimutuel pools to be distributed equally as commissions and purses.

SEC. 9. Section 19612.2 of the Business and Professions Code is amended to read:

19612.2. (a) In addition to the amounts otherwise deducted pursuant to this chapter, every association with an average daily handle of seven hundred fifty thousand dollars ($750,000) or less, except an association subject to Section 19614.2, which conducts a harness, quarter, Arabian, or Appaloosa horse meeting may deduct from the total amount handled in its daily exotic parimutuel pool up to 3 percent thereof to be distributed as additional commissions and purses as follows:

(1) For quarter horse meetings conducted other than pursuant to Section 19612.6 and for Appaloosa horse meetings, as agreed to by the association conducting the meeting and the organization representing the horsemen participating at the meeting.

(2) For harness and quarter horse meetings conducted pursuant to Section 19612.6, 50 percent as commissions and 50 percent as purses.

(b) From the amount deducted for quarter horse purses under subdivision (a), a sum equal to 25 percent thereof shall be held by the association to be paid as owners' premiums for California breds winning or placing second at the meeting. The premiums shall be distributed within 30 days of the date on which the funds are received by the officially recognized organization designated to administer this subdivision on a prorated percentage basis of first and second moneys earned to persons owning California-bred quarter horses at the time of their wins or places in races having a total purse value equal to or in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund.

The board shall designate the officially recognized organizations representing quarter horse horsemen to administer this subdivision and to distribute premiums. The organizations may, with the approval of the board, make a deduction for expenses not to exceed 10 percent of the total awards fund.

(c) From the amount deducted for Appaloosa and Arabian horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for

California-bred Appaloosa or Arabian horses winning or placing at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first money earned to persons owning California-bred Appaloosa or Arabian horses at the time of their wins or places in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred Appaloosa or Arabian horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund. The board shall designate the officially recognized organization representing Appaloosa or Arabian horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

(d) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a) and its distribution between commissions and purses. Except with the consent of the board, the amount of the deduction and its distribution shall not be changed during the course of the meeting.

(e) In addition to any deductions pursuant to this section, every harness racing association shall also deduct an additional 2 percent of its daily exotic parimutuel pool to be distributed equally as commissions and purses.

SEC. 10. Section 19614.2 of the Business and Professions Code is amended to read:

19614.2. (a) In addition to the amounts otherwise deducted pursuant to this chapter, the California Exposition and State Fair, or a district or county fair, or an association conducting its meeting pursuant to Section 19549.1, may deduct from the total amount handled in daily double, quiniela, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the current year of the fair meet. Of the amount deducted, if any, 52 percent shall be distributed as additional purses and 48 percent shall be distributed as additional commissions. For racing meetings conducted pursuant to Section 19549.3, of the amounts deducted, if any, 50 percent shall be distributed as purses and 50 percent shall be distributed as commissions.

(b) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board, the amount of the deduction shall not be changed during the course of the meeting.

(c) From the amount deducted for thoroughbred purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section

19617.2.

(d) From the amount deducted for quarter horse purses under subdivision (a), a sum equal to 25 percent thereof shall be held by the association to be paid as owners' premiums for California-breds winning or placing at the meeting. The premiums shall be distributed within 30 days of the date on which the funds are received by the officially recognized organization designated to administer this subdivision on a prorated percentage basis of first and second place moneys earned to persons owning California-bred quarter horses at the time of their wins or places in races having a total purse value equal to or in excess of the average purse value for races, other than stakes races, won by California-bred horses during the previous year.

The board shall designate the officially recognized organizations representing quarter horse horsemen to administer this subdivision and to distribute premiums.

The organization may, with the approval of the board, make a deduction for expenses not to exceed 10 percent of the total awards fund.

(e) From the amount deducted for Appaloosa and Arabian horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owner's premiums for California-breds winning or placing at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first moneys earned to persons owning California-bred Appaloosa and Arabian horses at the time of their wins or places in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred Appaloosa or Arabian horses during the previous year. The board shall designate the officially recognized organization representing Appaloosa and Arabian horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction for expenses not to exceed 10 percent of the total awards fund.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that this act take effect and apply during the current racing season, it is necessary that this act take effect immediately.

CHAPTER 1482

An act to amend Sections 19621, 19627, 19627.1, and 19630 of the Business and Professions Code, relating to fairs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 19621 of the Business and Professions Code is amended to read:

19621. (a) Not more than 5 percent of the Fair and Exposition Fund may be used during the 1989–90, 1990–91, or 1991–92 fiscal years to augment the budget of the Department of Food and Agriculture to provide services to fairs and to implement Sections 19627, 19627.1, and 19627.2.

(b) The Director of Food and Agriculture shall annually project the available revenues from this source and submit a recommendation to the Governor for the additional staff and contracts necessary to carry out those sections.

(c) This section shall become inoperative on July 1, 1992, and, as of January 1, 1993, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1993, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 2. Section 19627 of the Business and Professions Code is amended to read:

19627. (a) Six million five hundred forty-five thousand dollars ($6,545,000) of the first balance of the fund is hereby annually appropriated to the Department of Food and Agriculture for the encouragement of county, district, or combined county and district fairs exclusive of the California Exposition and State Fair, the Los Angeles County Fair, 1-A District Agricultural Association, the Sixth District Agricultural Association, known and designated as the California Museum of Science and Industry, and citrus fruit fairs referred to in subdivision (a) of Section 19626, to be apportioned by and expended under the supervision of the Department of Food and Agriculture in the manner and for the purpose prescribed by Part 4 (commencing with Section 4401) of Division 3 of the Food and Agricultural Code and other applicable provisions of law including this section.

(b) Each county, district, or combined county and district fair shall receive an annual apportionment of eighty-five thousand dollars ($85,000).

(c) Each county, district, or combined county and district agricultural fair shall, pursuant to a format established by the Director of Food and Agriculture, after consulting with the

managers and boards of directors of those fairs, do all of the following:

(1) File an annual statement of operations with the department.

(2) Have an annual budget approved by the department.

(3) Conduct an annual fair which includes agriculture exhibits and competitions.

(d) Funds not allocated pursuant to this section shall be allocated pursuant to Section 19630.

SEC. 3. Section 19627.1 of the Business and Professions Code is amended to read:

19627.1. (a) Three million four hundred sixty-five thousand dollars ($3,465,000) of the first balance of the fund is hereby annually appropriated to the Department of Food and Agriculture for the encouragement of county, district, or combined county and district fairs which receive funds under Section 19627.

(b) Each county, district, or combined county and district fair shall be eligible to receive an additional grant not exceeding forty-five thousand dollars ($45,000) from the department.

(c) Each county, district, or combined county and district fair shall, pursuant to guidelines established by the Director of Food and Agriculture, after consulting with the managers and boards of directors of those fairs, in addition to meeting the requirements of Section 19627, do both of the following:

(1) Comply with the management and fiscal directives of the department.

(2) Submit an annual maintenance program for approval by the department.

(d) Funds not allocated pursuant to this section shall be allocated pursuant to Section 19630.

SEC. 4. Section 19630 of the Business and Professions Code is amended to read:

19630. (a) Any unallocated balance from subdivision (a) of Section 19620 or Section 19627 or 19627.1 is hereby appropriated without regard to fiscal years, notwithstanding Section 13340 of the Government Code, for allocation by the Director of Food and Agriculture for capital outlay to county, district, combined county and district, or citrus fruit fairs for fair projects involving public health and safety, for fair projects involving major and deferred maintenance, for fair projects necessary due to any emergency, for projects that are required by physical changes to the fair site, for projects that are required to protect the fair property or installation, such as fencing and flood protection, and for the acquisition or improvement of any property or facility that will serve to enhance the operation of the fair.

It is the intent of the Legislature that these moneys be used primarily for those fairs whose sources of revenue may be limited for purposes described in this section.

(b) Any money subject to allocation pursuant to subdivision (a) may be allocated by the Director of Food and Agriculture to county, district, or combined county and district fairs for general operational

support purposes. The limitations as to the maximum amount of apportionment provided for in Section 19627 are not applicable to such an allocation.

SEC. 5. The amendments to Section 19627.1 of the Business and Professions Code made by Section 3 of this act during the 1990 portion of the 1989–90 Regular Session shall become operative on July 1, 1990.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to properly control the allocation of money from the Fair and Exposition Fund to county, district, and combined county and district fairs, commencing with allocations made during the 1990–91 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1483

An act to add Section 1363.2. to the Civil Code, relating to common interest developments.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 1363.2 is added to the Civil Code, to read:

1363.2. (a) A managing agent of a common interest development who accepts or receives funds belonging to the association shall deposit all such funds which are not placed into an escrow account with a bank, savings association, or credit union or into an account under the control of the association, into a trust fund account maintained by the managing agent in a bank, savings association, or credit union in this state. All funds deposited by the managing agent in the trust fund account shall be kept in this state in a financial institution, as defined in Section 31041 of the Financial Code, which is insured by the federal government, and shall be maintained there until disbursed in accordance with written instructions from the association entitled to the funds.

(b) At the written request of the board of directors of the association, the funds the managing agent accepts or receives on behalf of the association shall be deposited into an interest-bearing account in a bank, savings association, or credit union in this state, provided all of the following requirements are met:

(1) The account is in the name of the managing agent as trustee for the association or in the name of the association.

(2) All of the funds in the account are covered by insurance provided by an agency of the federal government.

(3) The funds in the account are kept separate, distinct, and apart from the funds belonging to the managing agent or to any other person or entity for whom the managing agent holds funds in trust except that the funds of various associations may be commingled as permitted pursuant to subdivision (d).

(4) The managing agent discloses to the board of directors of the association the nature of the account, how interest will be calculated and paid, whether service charges will be paid to the depository and by whom, and any notice requirements or penalties for withdrawal of funds from the account.

(5) No interest earned on funds in the account shall inure directly or indirectly to the benefit of the managing agent or his or her employees.

(c) The managing agent shall maintain a separate record of the receipt and disposition of all funds described in this section, including any interest earned on the funds.

(d) The managing agent shall not comingle the funds of the association with his or her own money or with the money of others which he or she receives or accepts, unless all of the following requirements are met:

(1) The managing agent commingled the funds of various associations on or before February 26, 1990, and has obtained a written agreement with the board of directors of each association that he or she will maintain a fidelity and surety bond in an amount that provides adequate protection to the associations as agreed upon by the managing agent and the board of directors of each association.

(2) The managing agent discloses in the written agreement whether he or she is deriving benefits from the commingled account or the bank, credit union, or savings institution where the moneys will be on deposit.

(3) The written agreement provided pursuant to this subdivision includes, but is not limited to, the name and address of the bonding companies, the amount of the bonds, and the expiration dates of the bonds.

(4) If there are any changes in the bond coverage or the companies providing the coverage, the managing agent discloses that fact to the board of directors of each affected association as soon as practical, but in no event more than 10 days after the change.

(5) The bonds assure the protection of the association and provide the association at least 10 days' notice prior to cancellation.

(6) Completed payments on the behalf of the association are deposited within 24 hours or the next business day and do not remain commingled for more than 10 calendar days.

(e) The prevailing party in an action to enforce this section shall be entitled to recover reasonable legal fees and court costs.

(f) As used in this section, a "managing agent" is a person or entity, who for compensation or, in expectation of compensation, exercises control over the assets of the association. However, a "managing agent" does not include a full-time employee of the

association or a regulated financial institution operating within the normal course of business, or an attorney at law acting withnin the scope of his or her license.

(g) As used in this section, "completed payment" means funds received which clearly identify the account to which the funds are to be credited.

CHAPTER 1484

An act to amend, repeal, and add Section 18802.6 of, and to add Section 26135 to, the Revenue and Taxation Code, and to amend Section 11713 of the Vehicle Code, relating to money laundering.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 18802.6 of the Revenue and Taxation Code is amended to read:

18802.6. (a) The Franchise Tax Board may require a copy of the federal information return to be filed with the Franchise Tax Board if a federal information return was required under any of the following:

(1) Section 6050H of the Internal Revenue Code, relating to mortgage interest received in trade or business from individuals.

(2) Section 6050J of the Internal Revenue Code, relating to foreclosures and abandonments of security.

(3) Section 6050K of the Internal Revenue Code, relating to exchanges of certain partnership interests.

(4) Section 6050L of the Internal Revenue Code, relating to certain dispositions of donated property.

(5) Section 6050N of the Internal Revenue Code, relating to returns regarding payments of royalties.

(6) Section 6039C of the Internal Revenue Code, relating to returns with respect to foreign persons holding direct investments in United States real property interests, if that person holds a direct investment in a California real property interest as defined in Section 18805.

(b) Every person required to make a return under subdivision (a) shall also furnish a statement to each person whose name is required to be set forth in the return, as required to do so by the Internal Revenue Code.

(c) A transferor of a partnership interest shall be required to notify the partnership of that exchange in accordance with Section 6050K(c) of the Internal Revenue Code.

(d) The Franchise Tax Board shall require a copy of the federal information return to be filed with the Franchise Tax Board if a

federal information return was required under Section 6050I of the Internal Revenue Code, relating to cash received in trade or business.

(e) (1) The Attorney General shall, upon court order following a showing ex parte to a magistrate of an articulable suspicion that an individual or entity has committed a felony offense to which a federal information return is related, be provided a copy of a federal information return filed with the Franchise Tax Board under subdivision (d). The Attorney General may make a return or information therefrom available to a district attorney subject to regulations promulgated by the Attorney General. The regulations shall require the district attorney seeking the return or information to specify in writing the specific reasons for believing that a felony offense has been committed to which the return or information is related.

(2) Any information or return obtained by the Attorney General or a district attorney pursuant to this section shall be confidential and used only for investigative or prosecutorial purposes.

(f) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 2. Section 18802.6 is added to the Revenue and Taxation Code, to read:

18802.6. (a) The Franchise Tax Board may require a copy of the federal information return to be filed with the Franchise Tax Board if a federal information return was required under any of the following:

(1) Section 6050H of the Internal Revenue Code, relating to mortgage interest received in trade or business from individuals.

(2) Section 6050I of the Internal Revenue Code, relating to cash received in trade or business.

(3) Section 6050J of the Internal Revenue Code, relating to foreclosures and abandonments of security.

(4) Section 6050K of the Internal Revenue Code, relating to exchanges of certain partnership interests.

(5) Section 6050L of the Internal Revenue Code, relating to certain dispositions of donated property.

(6) Section 6050N of the Internal Revenue Code, relating to returns regarding payments of royalties.

(7) Section 6039C of the Internal Revenue Code, relating to returns with respect to foreign persons holding direct investments in United States real property interests, if that person holds a direct investment in a California real property interest as defined in Section 18805.

(b) Every person required to make a return under subdivision (a) shall also furnish a statement to each person whose name is required to be set forth in the return, as required to do so by the Internal Revenue Code.

(c) A transferor of a partnership interest shall be required to notify the partnership of that exchange in accordance with Section

6050K(c) of the Internal Revenue Code.

(d) This section shall become operative on January 1, 1994.

SEC. 3. Section 26135 is added to the Revenue and Taxation Code, to read:

26135. (a) The Franchise Tax Board shall require a copy of the federal information return to be filed with the Franchise Tax Board if a federal information return was required under Section 6050I of the Internal Revenue Code, relating to cash received in trade or business.

(b) The penalty for failure to file an information return required by this section shall be determined in accordance with Section 6721 of the Internal Revenue Code.

SEC. 4. Section 11713 of the Vehicle Code, as amended by Chapter 89 of the Statutes of 1990, is amended to read:

11713. It is unlawful and a violation of this code for the holder of any license issued under this article to do any of the following:

(a) To make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, any such statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) To advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer not franchised to sell new motor vehicles of a particular line-make, may advertise that it has the ability to purchase for resale, vehicles available from franchised dealers provided that any such advertisement or offer clearly and conspicuously states: "Dealer is not franchised to sell or service new vehicles. All vehicles purchased directly from dealer must be purchased as used and are subject to availability from a franchised dealer."

(c) To fail, within 48 hours, in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) To advertise or represent a vehicle as a new vehicle if the vehicle falls within the purview of Section 665.

(e) To engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) For any licensed dealer to engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) To include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which amount is not due to the state unless, prior to the sale, that amount

has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) To employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or to fail to willfully notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) To deliver, following sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000).

(j) To use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) To advertise or otherwise represent, or knowingly to allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(*l*) To participate in the sale of a vehicle reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) To permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles sold by, or the business of, or branch location used by, the other person.

(n) To violate any provisions of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) To sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which any manufacturer's or distributor's warranty commenced.

(p) To accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. A purchase deposit relative to the sale of a vehicle by a dealer not franchised to sell new

motor vehicles of a particular line-make shall be subject to all of the following conditions: (i) there is a written purchase order; (ii) the deposit shall not exceed 2.5 percent of the total purchase price specified in the written purchase order; (iii) the deposit shall be deposited in a federally insured depository institution in a trust account held in favor of the purchaser; (iv) the deposit is entirely refundable upon written notice to the dealer; (v) the purchaser is advised in writing of his right to rescind the transaction prior to the delivery of the vehicle; and, (vi) each purchase agreement shall contain a provision for liquidated damages in the event of default under the purchase agreement, which shall not limit the dealer's right of offset against funds held in favor of the purchaser in the trust account.

(q) To consign for sale to another dealer a new vehicle.

CHAPTER 1485

An act to amend Sections 17058 and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 17058 of the Revenue and Taxation Code, as amended by Chapter 166 of the Statutes of 1990, is amended to read:

17058. (a) (1) There shall be allowed as a credit against the amount of net tax (as defined in Section 17039) a state low-income housing credit in an amount equal to the amount determined in subdivision (c), computed in accordance with the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, including the amendments contained in the Technical and Miscellaneous Revenue Act of 1988 and in the federal Revenue Reconciliation Act of 1989, except as otherwise provided in this section.

(2) "Taxpayer" for purposes of this section means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor" for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the Mortgage Bond and Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The Mortgage Bond and Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The Mortgage Bond and Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the Mortgage Bond and Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to subparagraph (C) of paragraph (5) of subsection (d) of Section 42 of the Internal Revenue Code, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed without regard to Section 42(d)(5)(C) of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means either of the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building which is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building which satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Preservation Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the three calendar years after the year of application to the Mortgage Bond and Tax Credit Allocation Committee.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period; or

(B) The amount of the cash flow from those units in the building that are not low-income units. For purposes of computing cash flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may be accumulated and distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four taxable years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the taxable year in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable to this section.

(g) Notwithstanding subdivision (m), the aggregate housing

credit dollar amount which may be allocated annually by the Mortgage Bond and Tax Credit Allocation Committee pursuant to this section and Section 23610.5 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars ($35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the Mortgage Bond and Tax Credit Allocation Committee and the allocation recipient.

(h) (1) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 18 years of the compliance period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the housing sponsor designates the net available units as low-income units subject to the set-aside and rent requirements, up to the number of low-income units necessary to arrive at the original applicable fraction, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced, except to the extent the excess was used for the rehabilitation of the project.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the Mortgage Bond and Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to

subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, providing the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.

(7) A requirement that the housing sponsor notify the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(8) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(9) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of not less than three periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum

percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations or other similar events prevent the use of three allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code.

(3) Notwithstanding subsection (m) of Section 42 of the Internal Revenue Code, the Mortgage Bond and Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the compliance period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, for the low-income units, and a development fee that does not exceed a specified percentage of the qualified basis of the project prior to inclusion of the development fee in the qualified basis, as determined by the committee.

(B) The committee shall give a preference to those projects

satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; or

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which the greatest percentage of total square feet of all residential units is comprised of low-income units with three or more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(vi) Projects located within a "difficult to develop area" or a "qualified census tract" as defined in Section 42(d) (5) (C) of the Internal Revenue Code.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section and Section 23610.5 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the credit allowed under this section exceeds the net tax, the excess credit may be carried over to reduce the net tax in the following year, and succeeding taxable years, if necessary, until the credit has been exhausted.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 23610.5 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total amount of credits authorized in any year under the Personal Income

Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

The aggregate amount of credit granted pursuant to this section and Section 23610.5 in 1989 may exceed thirty-five million dollars ($35,000,000) by an amount equal to the unallocated credit from 1987 and 1988.

(n) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of 1990 a state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(o) The credit period with respect to an allocation of credit in 1989 by the Mortgage Bond and Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(p) (1) This section shall remain in effect only until December 1, 1990, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

(2) Notwithstanding paragraph (1), this section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code pertaining to low-income housing credits remains in effect.

SEC. 2. Section 17058 of the Revenue and Taxation Code, as amended by Chapter 166 of the Statutes of 1990, is amended to read:

17058. (a) (1) There shall be allowed as a credit against the amount of net tax (as defined in Section 17039) a state low-income housing credit in an amount equal to the amount determined in subdivision (c), computed in accordance with the provisions of Section 42 of the Internal Revenue Code , except as otherwise provided in this section.

(2) "Taxpayer" for purposes of this section means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor" for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California

and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the Mortgage Bond and Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The Mortgage Bond and Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The Mortgage Bond and Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the Mortgage Bond and Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to subparagraph (C) of paragraph (5) of subsection (d) of Section 42 of the Internal Revenue Code, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed without regard to Section 42(d)(5)(C) of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives

an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building which is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building which satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Preservation Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the three calendar years after the year of application to the Mortgage Bond and Tax Credit Allocation Committee.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the

close of the first taxable year of the credit period; or

(B) The amount of the cash flow from those units in the building that are not low-income units. For purposes of computing cash flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may be accumulated and distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four taxable years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the taxable year in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable to this section.

(g) Notwithstanding subdivision (m), the aggregate housing credit dollar amount which may be allocated annually by the

Mortgage Bond and Tax Credit Allocation Committee pursuant to this section and Section 23610.5 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars ($35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the Mortgage Bond and Tax Credit Allocation Committee and the allocation recipient.

(h) (1) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 18 years of the compliance period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the housing sponsor designates the net available units as low-income units subject to the set-aside and rent requirements, up to the number of low-income units necessary to arrive at the original applicable fraction, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced, except to the extent the excess was used for the rehabilitation of the project.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the Mortgage Bond and Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code

shall apply, providing the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.

(7) A requirement that the housing sponsor notify the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(8) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(9) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of not less than three periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling

which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations or other similar events prevent the use of three allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code.

(3) Notwithstanding subsection (m) of Section 42 of the Internal Revenue Code, the Mortgage Bond and Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies. and required equity, for the low-income units, and a development fee that does not exceed a specified percentage of the qualified basis of the project prior to inclusion of the development fee in the qualified basis, as determined by the committee.

(B) The committee shall give a preference to those projects

satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; or

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which the greatest percentage of total square feet of all residential units is comprised of low-income units with three or more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(vi) Projects located within a "difficult to develop area" or a "qualified census tract" as defined in Section 42(d) (5) (C) of the Internal Revenue Code.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section and Section 23610.5 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the credit allowed under this section exceeds the net tax, the excess credit may be carried over to reduce the net tax in the following year, and succeeding taxable years, if necessary, until the credit has been exhausted.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 23610.5 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total amount of credits authorized in any year under the Personal Income

Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

The aggregate amount of credit granted pursuant to this section and Section 23610.5 in 1989 may exceed thirty-five million dollars ($35,000,000) by an amount equal to the unallocated credit from 1987 and 1988.

(n) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of 1990 a state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(o) The credit period with respect to an allocation of credit in 1989 by the Mortgage Bond and Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(p) (1) This section shall remain in effect only until December 1, 1990, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

(2) Notwithstanding paragraph (1), this section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code pertaining to low-income housing credits remains in effect.

SEC. 3. Section 23610.5 of the Revenue and Taxation Code, as amended by Chapter 166 of the Statutes of 1990, is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the "tax" (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, as amended, including the amendments contained in the Technical and Miscellaneous Revenue Act of 1988 and the federal Revenue Reconciliation Act of 1989, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the

requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the Mortgage Bond and Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The Mortgage Bond and Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The Mortgage Bond and Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the Mortgage Bond and Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to subparagraph (C) of paragraph (5) of subsection (d) of Section 42 of the Internal Revenue Code, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed without regard to Section 42(d)(5)(C) of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the

building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means either of the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building which is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building which satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the three calendar years after the year of application to the Mortgage Bond and Tax Credit Allocation Committee.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall

not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four income years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) Notwithstanding subdivision (m), the aggregate housing credit dollar amount which may be allocated annually by the Mortgage Bond and Tax Credit Allocation Committee pursuant to this section and Section 17058 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars ($35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the Mortgage Bond and Tax Credit Allocation Committee and the allocation recipient.

(h) (1) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive income years beginning with the first income year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 18 years of the compliance period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the housing sponsor designates the next available units as low-income units subject to the set-aside and rent requirements, up to the number of low-income units necessary to arrive at the original applicable fraction, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced, except to the extent the excess was used for the rehabilitation of the project.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

(1) The requirements of this section shall be set forth in a regulatory agreement between the Mortgage Bond and Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of

any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.

(G) A requirement that the housing sponsor notify the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(H) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(I) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of not less than three periods in each calendar year during which applications may be filed and considered. The

committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of three allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code.

(3) Notwithstanding subsection (m) of Section 42 of the Internal Revenue Code, the Mortgage Bond and Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a) of Section 17058, shall demonstrate that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the compliance period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, for the low-income units, and a development fee that does not exceed a specified percentage of the qualified basis of the project prior to inclusion of the development fee in the qualified basis, as determined by the committee.

(B) The committee shall give a preference to those projects

satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; or

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which the greatest percentage of total square feet of all residential units is comprised of low-income units with three or more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(vi) Projects located within a "difficult to develop area" or a "qualified census tract" as defined in Section 42(d) (5) (C) of the Internal Revenue Code.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 17058 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total

amount of credits authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

The aggregate amount of credit granted pursuant to this section and Section 17058 in 1989 may exceed thirty-five million dollars ($35,000,000) by an amount equal to the unallocated credit from 1987 and 1988.

(n) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(o) The credit period with respect to an allocation of credit in 1989 by the Mortgage Bond and Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(p) (1) This section shall remain in effect only until December 1, 1990, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

(2) Notwithstanding paragraph (1), this section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, pertaining to low-income housing credits, remains in effect.

SEC. 4. Section 23610.5 of the Revenue and Taxation Code, as amended by Chapter 166 of the Statutes of 1990, is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the "tax" (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California

and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the Mortgage Bond and Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The Mortgage Bond and Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The Mortgage Bond and Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the Mortgage Bond and Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to subparagraph (C) of paragraph (5) of subsection (d) of Section 42 of the Internal Revenue Code, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed without regard to Section 42(d)(5)(C) of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives

an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building which is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building which satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the three calendar years after the year of application to the Mortgage Bond and Tax Credit Allocation Committee.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the

close of the first taxable year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four income years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) Notwithstanding subdivision (m), the aggregate housing credit dollar amount which may be allocated annually by the

Mortgage Bond and Tax Credit Allocation Committee pursuant to this section and Section 17058 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars ($35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the Mortgage Bond and Tax Credit Allocation Committee and the allocation recipient.

(h) (1) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive income years beginning with the first income year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 18 years of the compliance period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the housing sponsor designates the next available units as low-income units subject to the set-aside and rent requirements, up to the number of low-income units necessary to arrive at the original applicable fraction, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced, except to the extent the excess was used for the rehabilitation of the project.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

(1) The requirements of this section shall be set forth in a regulatory agreement between the Mortgage Bond and Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section

50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.

(G) A requirement that the housing sponsor notify the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(H) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(I) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of not less than three periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling

which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of three allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code.

(3) Notwithstanding subsection (m) of Section 42 of the Internal Revenue Code, the Mortgage Bond and Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a) of Section 17058, shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, for the low-income units, and a development fee that does not exceed a specified percentage of the qualified basis of the project prior to inclusion of the development fee in the qualified basis, as determined by the committee.

(B) The committee shall give a preference to those projects

satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; or

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which the greatest percentage of total square feet of all residential units is comprised of low-income units with three or more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(vi) Projects located within a "difficult to develop area" or a "qualified census tract" as defined in Section 42(d) (5) (C) of the Internal Revenue Code.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 17058 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total

amount of credits authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

The aggregate amount of credit granted pursuant to this section and Section 17058 in 1989 may exceed thirty-five million dollars ($35,000,000) by an amount equal to the unallocated credit from 1987 and 1988.

(n) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(o) The credit period with respect to an allocation of credit in 1989 by the Mortgage Bond and Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(p) (1) This section shall remain in effect only until December 1, 1990, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

(2) Notwithstanding paragraph (1), this section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, pertaining to low-income housing credits, remains in effect.

SEC. 5. Sections 2 and 4 of this bill incorporate amendments to Sections 17058 and 23610.5 of the Revenue and Taxation Code proposed by both this bill and SB 1925. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Sections 17058 and 23610.5 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1925, in which case Sections 1 and 3 of this bill shall not become operative.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1486

An act to amend Sections 68540, 68541, and 70045.9 of, and to add Section 68541.5 to, the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 68540 of the Government Code is amended to read:

68540. (a) Whenever a judge of a superior court is assigned by the Chairperson of the Judicial Council to sit in a superior court in another county, the receiving county shall pay the state 50 percent of the judge's full salary for the time the judge served the receiving court and the state shall reimburse the lending county 10 percent of the judge's salary. If the county is an option county, as defined in Section 77004, the amounts due shall be paid and credited as provided in Section 77205.3.

(b) The state shall pay the additional compensation of a judge of a municipal or justice court, assigned to a superior court. If the judge is assigned to a county other than that in which he or she was elected or appointed, the receiving county shall pay the state 50 percent of a superior court judge's full salary for the time the judge served the receiving court and the state shall reimburse the lending county 10 percent of the judge's salary, except as provided in Section 68541. If the county is an option county, as defined in Section 77004, the amounts due shall be paid and credited as provided in Section 77205.3.

SEC. 2. Section 68541 of the Government Code is amended to read:

68541. (a) The compensation of a judge of a justice court who receives a part-time salary and who is assigned by the Chairperson of the Judicial Council to serve in a court in a county other than that in which he or she was elected or appointed shall be paid by the state, and the receiving county shall pay the state 50 percent of the full salary of a judge of the court to which he or she was elected or appointed for the time the judge served the receiving court. If the county is an option county, as defined by Section 77004, the amount due shall be paid as provided in Section 77205.3.

(b) If a justice court judge is assigned to another justice court, except for exchange assignments as defined by rules adopted by the Judicial Council, the salary of the office to which he or she is assigned shall, for purposes of Section 68540.7, be deemed to be equivalent to the salary paid a justice court judge certified pursuant to Section 68202.5 of the Government Code.

SEC. 3. Section 68541.5 is added to the Government Code, to

read:

68541.5. Notwithstanding Section 68540, 68540.5, 68541, or 68543.5, a receiving county is not required to pay the state, and the state shall not reimburse the lending county any part of a judge's salary if any of the following occurs:

(a) The judge is designated as a member of a superior court appellate department pursuant to paragraph (1) of subdivision (a) of Section 77 of the Code of Civil Procedure in a county other than that in which he or she was elected or appointed.

(b) The judge is serving pursuant to a reciprocal agreement or exchange assignment, as defined in rules adopted by the Judicial Council, in a county other than that in which he or she was elected or appointed.

(c) The judge is selected to decide a question of disqualification, pursuant to Section 170.3 of the Code of Civil Procedure, concerning a judge in a county other than that in which the selected judge was elected or appointed.

(d) When all of the judges of a court have been disqualified or recused, and a judge is assigned pursuant to Section 170.8 of the Code of Civil Procedure, to a county other than that in which he or she was elected or appointed.

(e) The judge is assigned to serve in a court as a result of a criminal case transferred to that court pursuant to a change of venue order.

(f) The judge is assigned to hear a coordinated proceeding pursuant to Chapter 2 (commencing with Section 404) of Title 4 of Part 2 of the Code of Civil Procedure in the county to which the judge is assigned.

SEC. 4. Section 70045.9 of the Government Code is amended to read:

70045.9. Notwithstanding any other provision of law, the provisions of this section shall apply to the official court reporters in Shasta County:

(a) The regular full-time official court reporters shall perform the following duties:

(1) Report all criminal proceedings in superior court.

(2) Report all juvenile proceedings other than those heard by juvenile court referee or traffic hearing officer.

(3) Report all civil jury trials in superior court, unless the court determines it is not required.

(4) Report any other proceeding in the superior court at the request of the judge of the superior court.

(5) Report any superior court proceeding when a party requests a court reporter in accordance with the rules of court.

(6) Report all criminal investigations of the grand jury, when requested by the foreman, or by the district attorney.

(7) Report the preliminary examination of those accused of crime before magistrates or municipal court judges within Shasta County, or before both.

(8) Report coroner's inquests, when requested by the coroner.

(9) Report hearings of the Board of Equalization of the County of Shasta, as requested by that board.

(10) Other reporting or related services, as directed by the judges of the superior court.

(11) When not occupied with the above duties, and upon request of the board of supervisors and approval of the presiding judge of the superior court, he or she shall report matters before the board of supervisors.

(b) Each regular full-time court reporter shall be paid a monthly salary of one thousand four hundred seventy dollars ($1,470), unless the Board of Supervisors of Shasta County provides for compensation in excess of that amount, in which event the amount set shall apply. The salary is for compensation for reporting services set forth under subdivision (a). For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941).

The regular full-time official court reporters shall be entitled to the same privileges with respect to retirement, vacation (upon approval of judge to whom assigned), sick leave, and group insurance, which either now or hereafter may be provided by ordinance or resolution to other comparable employees of the County of Shasta.

(c) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to the provisions of subdivision (a), the judge or judges of the superior court may appoint as many additional official court reporters, who shall be known as official reporters pro tempore, as the business of the courts may require in order that the judicial business of the court may be carried on without delay. In the event the board of supervisors has entered into a contract for supplemental reporter services with a qualified person or persons first approved by the presiding judge of the superior court, the person or persons shall be appointed as reporter pro tempore. However, if the person or persons are not reasonably available, the judge may appoint any qualified person. Notwithstanding other provisions of this section, when an assignment of a pro tempore reporter is made to proceedings in the superior court, the assignment shall be deemed to run to the completion of the proceeding.

Reporters pro tempore shall be paid in accordance with the contract with the board of supervisors or, in absence thereof, with the per diem, transcription, and other fee provisions of Article 9 (commencing with Section 69941). Such per diem, traveling and other expenses, and the fees chargeable to the county under the terms of these provisions shall be a proper county charge.

(d) During the hours during which the court is open as prescribed by the Shasta County Superior Court for the transaction of judicial business, official court reporters shall devote full time to the performance of the duties required of them by law and shall not engage or solicit to engage in any other employment in their professional capacity.

(e) In addition to any fee otherwise required, in civil trials that last longer than one judicial day, a fee equal to the per diem rate for official court reporters pro tempore shall be charged per day of service to the parties, on a pro rata basis, for the services of an official court reporter for the second and each succeeding day a court reporter is required.

Each party shall deposit his or her pro rata share of such fee with the clerk at the beginning of the second and each succeeding day's court session.

In addition to any fee otherwise required, in civil cases in which the court orders a daily transcript necessitating the services of two court reporters, the party requesting the daily transcript shall pay a fee equal to the per diem rate for court reporters pro tempore for each day of service rendered by the second court reporter.

This fee shall be taxed as costs in favor of any party paying the same and to whom costs are awarded by the judgment of the court.

(f) Court reporters pro tempore serving in the superior and municipal courts shall receive a per diem equal to the base wage of the official court reporter for an eight-hour day, excluding benefits. This fee shall be adjusted by the same, general across-the-board salary adjustment enacted by the county in any salary ordinance applicable to official court reporters. For services of less than four hours in any day, the pro tempore reporter will receive a per diem equal to 65 percent of the base wage.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for adequate court reporter services in Shasta County, and to permit counties to receive appropriate block grants for the first quarter of the fiscal year where judges have been assigned for the purposes described in this bill, it is necessary for this act to take effect immediately.

CHAPTER 1487

An act to amend Section 69.5 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county

records as is specified by the board necessary to identify fully all claims under this section allowed by assessors. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an

interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them shall be deemed eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of the claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age. In the absence of available proof, the claimant shall certify under penalty of perjury that the age requirement is met.

(3) The address and, if known, the assessor's parcel number of the original property and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the

claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief

days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this section shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(j) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 1.3. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be

applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement

dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years of age, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the

following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age. In the absence of available proof the claimant shall certify under penalty of perjury that the age requirement is met.

(3) The address and, if known, the assessor's parcel number of the original property, and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his

or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the

date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse shall also be deemed a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this

subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more that the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this section shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original

properties to replacement dwellings located in different counties, this section shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(k) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 1.5. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted

in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall

report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them shall be deemed eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of the claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled

condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under the penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article

XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the original property or the replacement dwelling, whether or not that spouse joined in the claim, the spouse shall also be deemed a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has or has not been met by the spouse.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Severely and permanently disabled person" means and person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more that the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(j) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 1.7. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain

operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to

identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an

interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them shall be deemed eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and

permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under the penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property, and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse shall also be deemed a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(14) "Severely and permanently disabled person" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the

following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any

portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(k) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 2. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a),

any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the

following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has

attained the age of 55 years shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of the claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age. In the absence of available proof, the claimant shall certify under penalty of perjury that the age requirement is met.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older

at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the

date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the original property or the replacement dwelling, whether or not that spouse joined in the claim, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has or has not been met by the spouse.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due

when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section shall also apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) This section shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(j) The amendments to this section made by the act adding this subdivision shall become operative on January 1, 1999.

SEC. 2.3. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the

purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property

of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit

dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who was a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age. In the absence of available proof, the claimant shall certify under penalty of perjury that the age requirement is met.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section

110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original

property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section shall also apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) This section shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(k) The amendments to this section made by the act adding this subdivision shall become operative on January 1, 1999.

SEC. 2.5. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted the property tax relief provided by this section. In order to prevent duplication of

claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner,

subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of the claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty,

attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under the penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the

original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the

date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the original property or the replacement dwelling, whether or not that spouse joined in the claim, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has or has not been met by the spouse.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely

filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more that the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) (1) This section shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(j) The amendments to this section made by the act adding this subdivision shall become operative on January 1, 1999.

SEC. 2.7. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's

exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit

or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall

only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under the penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or

guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his

or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in

paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(12) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more that the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have

occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) This section, except as provided in paragraph (2), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(k) The amendments to this section made by the act adding this subdivision shall become operative on January 1, 1999.

SEC. 3. The amendments to Section 69.5 of the Revenue and Taxation Code made by the act adding this section with respect to new construction performed upon a replacement dwelling subsequent to the transfer of base-year value to that dwelling shall only apply to any replacement dwelling which is purchased or newly constructed on or after January 1, 1991.

SEC. 4. (a) Sections 1.3 and 2.3 of this bill incorporate amendments to Section 69.5 of the Revenue and Taxation Code proposed by both this bill and AB 3723. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 69.5 of the Revenue and Taxation Code, (3) AB 3843 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3723, in which case Sections 1, 1.5, 1.7, 2, 2.5, and 2.7 of this bill shall not become operative.

(b) Sections 1.5 and 2.5 of this bill incorporate amendments to Section 69.5 of the Revenue and Taxation Code proposed by both this bill and AB 3843. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 69.5 of the Revenue and Taxation Code, (3)

AB 3723 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3843 in which case Sections 1, 1.3, 1.7, 2, 2.3, and 2.7 of this bill shall not become operative.

(c) Sections 1.7 and 2.7 of this bill incorporate amendments to Section 69.5 of the Revenue and Taxation Code proposed by this bill, AB 3723, and AB 3843. They shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1991, (2) all three bills amend Section 69.5 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 3723 and AB 3843, in which case Sections 1, 1.3, 1.5, 2, 2.3, and 2.5 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the duties, obligations, or responsibilities imposed on local government by this act were expressly included in a ballot measure approved by the voters in a statewide election. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1488

An act to amend Sections 1547, 1569.485, and 1596.891 of, and to add Sections 1551.5, 1569.515, and 1596.8875 to, the Health and Safety Code, relating to care facilities.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1547 of the Health and Safety Code is amended to read:

1547. (a) Notwithstanding any other provision of this chapter, any person who violates Section 1503.5 or 1508, or both, may be assessed by the department an immediate civil penalty in the amount of two hundred dollars ($200) per day of the violation.

(b) The civil penalty authorized in subdivision (a) shall be imposed if an unlicensed facility is operated and the operator refuses to seek licensure or the operator seeks licensure and the licensure application is denied and the operator continues to operate the unlicensed facility, unless other remedies available to the department, including criminal prosecution, are deemed more effective by the department.

(c) An operator may appeal the assessment to the director. The department shall adopt regulations setting forth the appeal procedure.

SEC. 1.5. Section 1551.5 is added to the Health and Safety Code,

to read:

1551.5. Notwithstanding Section 11510 of the Government Code, witnesses subpoenaed at the request of the department for a hearing conducted pursuant to this article who attend a hearing may be paid by the department witness fees and mileage as provided by Section 68093 of the Government Code. In addition, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

SEC. 2. Section 1569.485 of the Health and Safety Code is amended to read:

1569.485. (a) Notwithstanding any other provision of this chapter, any person who violates Section 1569.10 or 1569.44, or both, shall be assessed by the department an immediate civil penalty in the amount of one hundred dollars ($100) per resident for each day of the violation, unless other remedies available to the department, including criminal prosecution, are deemed more effective by the department.

(b) The civil penalty authorized in subdivision (a) shall be doubled if an unlicensed facility is operated and the operator refuses to seek licensure or the operator seeks licensure and the licensure application is denied and the operator continues to operate the unlicensed facility, unless other remedies available to the department, including criminal prosecution, are deemed more effective by the department.

(c) An operator may appeal the assessment to the director. The department shall adopt regulations setting forth the appeal procedure.

SEC. 2.5. Section 1569.515 is added to the Health and Safety Code, immediately following Section 1569.51, to read:

1569.515. Notwithstanding Section 11510 of the Government Code, witnesses subpoenaed at the request of the department for a hearing conducted pursuant to this article who attend a hearing may be paid by the department witness fees and mileage as provided by Section 68093 of the Government Code. In addition, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

SEC. 3. Section 1596.8875 is added to the Health and Safety Code, immediately following Section 1596.887, to read:

1596.8875. Notwithstanding Section 11510 of the Government Code, witnesses subpoenaed at the request of the department for a hearing conducted pursuant to this article who attend a hearing may be paid by the department witness fees and mileage as provided by Section 68093 of the Government Code. In addition, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state

employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

SEC. 4. Section 1596.891 of the Health and Safety Code is amended to read:

1596.891. (a) A person who violates Section 1596.80 may be liable for an immediate assessment of civil penalties in the amount of two hundred dollars ($200) per day.

(b) The penalty specified in subdivision (a) shall be imposed if the operator of an unlicensed facility refuses to seek licensure or the operator seeks licensure and is denied but continues to operate, unless other remedies available to the department, including criminal prosecution, are deemed more effective by the department.

(c) The operator may appeal the assessment to the director. The department shall adopt regulations setting forth the appeals procedure.

(d) The operator shall be exempt from the civil penalty specified in subdivision (a) if a lack of liability insurance is the sole reason for nonlicensure and the reason for operating without liability insurance is not due to any fault on the part of the operator.

CHAPTER 1489

An act to add and repeal Article 8.1 (commencing with Section 11517) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to aid to families with dependent children.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Prenatal care is essential to the health of pregnant women and their babies.

(b) Some pregnant women, particularly young pregnant women, are not obtaining that health care.

(c) Parents benefit from learning about health care, parenting techniques, and family planning.

SEC. 2. It is the intent of the Legislature to provide a resource directory of medical providers and educational programs to pregnant women so that they may have access to prenatal and life skill services.

SEC. 3. Article 8.1 (commencing with Section 11517) is added to Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 8.1. Supportive Resources for Pregnant Women: Demonstration Project

11517. (a) The department, upon request of the Board of Supervisors of the County of Los Angeles, shall permit the Los Angeles County Department of Social Services to establish a demonstration project, in a selected region or regions of Los Angeles County, to provide, on a volunteer basis, any eligible recipient, as defined in subdivision (b), with supportive and accessible perinatal resources.

(b) For purposes of this article, "eligible recipient" means any eligible pregnant recipient of benefits under Chapter 2 (commencing with Section 11200).

11517.05. (a) The Los Angeles County Department of Social Services, in consultation with the Los Angeles County Department of Health Services, shall compile a directory of prenatal and life skills resources, and provide a copy of that directory to any eligible recipient.

(b) (1) The participating county department of social services shall compile a directory of resources that reflects the linguistic and cultural demographics of the client profile of the selected region or regions.

(2) The participating county department of social services shall, to the extent possible, identify resources that are geographically accessible and affordable to eligible pregnant recipients.

(3) The directory required by this section shall include all of the following resources:

(A) A list of public and private obstetrical providers who accept Medi-Cal reimbursement for the provision of medical services.

(B) A list of schools or organizations that provide prenatal education and life skills classes which include, but are not limited to, all of the following subjects:

(i) Prenatal and postpartum care.

(ii) Perinatal nutrition.

(iii) Infant care and development.

(iv) Parenting techniques.

(v) Family planning.

(C) Other resources, as identified by the participating county department of social services.

11517.10. (a) (1) The participating county department of social services, in consultation with the county health department, shall assess and monitor the usage of the resource directory.

(2) The participating county department of social services shall submit a report on the results of the assessment required by paragraph (1) to the appropriate committees of the Legislature three years after the inception of the project, but not later than July 1, 1995.

(b) The report required pursuant to this section shall include, but not be limited to, all of the following:

(1) The number of women who received a list of resources under this article.

(2) The number of women who did not use the resources.

(3) The reasons the resources contained in the list were not used.

(4) The kinds of additional services needed to enable pregnant women to use those resources.

11517.15. The County of Los Angeles shall be responsible for the costs of implementation of this article.

11517.2. This article shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

CHAPTER 1490

An act to amend Sections 14036 and 14007.1 of, to amend and renumber Section 14039 of, and to add Sections 14036.3 and 14036.5 to, the Government Code, to amend Sections 99318, 99318.2, and 130554 of, and to add Sections 99317.8 and 99319 to, the Public Utilities Code, and to add Section 7251.2 to the Revenue and Taxation Code, relating to transportation.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds that the consolidation of future commuter and intercity maintenance facilities in Santa Clara County at the terminous of two major rail corridors will promote efficiency and avoid duplication of facilities.

SEC. 2. Section 14007.1 of the Government Code is amended to read:

14007.1. (a) There is in the Department of Transportation the Division of Rail, which is responsible for the development of a comprehensive rail passenger system and the preparation of the rail passenger development plan required pursuant to Section 14036.

(b) An undersecretary of the agency shall be assigned to give attention to rail matters to ensure that the rail passenger system and plan are carried out.

(c) It is the intent of the Legislature that the commission give high priority to the implementation of the rail passenger system and plan.

SEC. 3. Section 14036 of the Government Code is amended to read:

14036. The department shall prepare a rail passenger development plan biennially for submission to the Legislature, the Governor, the Public Utilities Commission, and the California Transportation Commission. The plan shall be submitted to the

commission by April 1, 1991, and each odd-numbered year thereafter, for its advice and consent, and to the Legislature, the Governor, and the Public Utilities Commission by the following July 1. The plan shall consist of all of the following:

(a) For capital and operating subsidies, all actual encumbrances for the prior two fiscal years; and for state operations, all actual expenditures for the prior two fiscal years. All revenues shall be identified by source.

(b) For capital and operating subsidies, estimated encumbrances and revenues for the current year; and for state operations, estimated expenditures for the current year. The department shall use the same format as is required for prior year expenditures pursuant to subdivision (a).

(c) For the budget year and the four following fiscal years, proposed encumbrances for capital and operating subsidies shall be reported in the same format as is required for prior year's expenditures. For state operations, proposed expenditures for the budget year shall be reported.

(d) The identification and cost of capital facilities necessary to enhance competitiveness of rail passenger services, including, for each intercity route, a list of at least the three highest priority capital improvement projects, with cost estimates and a funding plan.

(e) A performance evaluation of all services in operation, including performance trends, potential for efficiency and effectiveness, possible improvements, and strategies to achieve that potential.

(f) A recommendation of a level of and program for services over a five-year period, including a list of service enhancements on existing and additional routes, with funding and priority recommendations.

(g) An evaluation of reports by regional planning agencies and county transportation commissions on commuter service alternatives in their regions, including presentation of their recommendations.

(h) A map showing all existing intercity and commuter passenger rail routes and services, all proposed intercity and commuter passenger rail routes and services, and all intercity and commuter passenger rail routes and services that are the subject of feasibility studies.

(i) A report on the expenditure of marketing activities funds for purchases of media advertising of rail passenger services.

This report shall be prepared in consultation with the Public Utilities Commission and the National Rail Passenger Corporation. The department may consult with other agencies, organizations, and persons with expertise. The department shall employ realistic assumptions, using Public Utilities Commission cost data whenever possible, with respect to the level of services it can provide and the cost of these services when developing the plan.

SEC. 4. Section 14036.3 is added to the Government Code, to

read:

14036.3. The department shall consider and estimate the cost of each of the following types of service improvements to the San Joaquin Amtrak route, and report its findings in the rail passenger development plan submitted in 1991 pursuant to Section 14036:

(a) Checked baggage service:

In order to better serve the elderly, disabled, and passengers traveling with small children, the department shall investigate the possibility of Amtrak offering this type of passenger convenience on at least one of the three daily roundtrips, including the least patronized roundtrip where enroute delays due to baggage handling would be most absorbable. Particular consideration should be given to offering baggage service to major stations, including off-line staffed Amtrak stations served by feeder buses, if service to all staffed stations cannot be implemented immediately. The department shall also consider funding capital needs at stations necessary to offer baggage service from funds available pursuant to Section 14037.

(b) Custom class service:

In order to provide a higher level of service to passengers desiring a guaranteed, reserved seat, the department shall investigate implementation of custom class service on the San Joaquin route, similar to the enhanced service offered as an option on the Amtrak San Diegan route. If custom class service is offered, due consideration should be given to similar higher levels of service on major feeder bus routes, as warranted. The department shall also investigate the potential availability of cellular telephone service on this route.

(c) Dining service:

The department shall investigate steps that may need to be taken to restore quality dining car service, offering full, hot meals, substantially similar to the service offered on this route prior to the removal of high-level cars in December of 1989.

SEC. 5. Section 14036.5 is added to the Government Code, to read:

14036.5. (a) As part of its marketing activities in support of intercity rail services and associated feeder bus services, the department shall provide for complete train and bus schedule information, for services funded or otherwise coordinated by the department, to be published in existing, comprehensive nationwide transportation schedule publications for bus and rail services. The department is not required to provide for publication of the schedule information specified in subdivision (a) if complete bus and train schedules are published by the National Railroad Passenger Corporation (Amtrak) in its nationwide timetable (Form A) in addition to the department's own California timetable.

SEC. 5.5. Section 14039 of the Government Code is amended and renumbered to read:

14036.4. The department shall report in the rail passenger development plan prepared pursuant to Section 14036 on the

amount of funds available to the state under the federal rail-highway crossings program (23 U.S.C. Sec. 130), including the cash balance, funds encumbered during the last year, and amounts anticipated to be received during the subsequent year. The plan shall also discuss any issues relating to the department's ability to spend these federal funds on a timely basis.

SEC. 6. Section 99317.8 is added to the Public Utilities Code, to read:

99317.8. (a) A public agency which has received an allocation for funding of an intermodal transfer station pursuant to paragraph (3) of subdivision (a) of Section 99317 shall provide for maintaining the station and its appurtenances, including, but not limited to, restroom facilities, in good condition and repair, and in accordance with high standards of cleanliness. As part of its duties in monitoring state-funded rail and bus services, the department shall, at least annually, conduct an unannounced inspection of each facility and make recommendations, if any, to the operating agency. Results of the department's inspections shall be included in the rail passenger development plan required pursuant to Section 14036 of the Government Code. If appropriate remedial action is not taken, the department may recommend to the commission that future applications for transit capital funding be denied.

(b) The Legislature finds and declares that regular inspections of intermodal stations are necessary to protect the state's capital investment in these essential transportation facilities and to avoid the problems resulting from deferred maintenance.

SEC. 7. Section 99318 of the Public Utilities Code is amended to read:

99318. (a) The department and other public entities may submit applications to the department for allocations for transit capital improvement projects specified in Section 99317 from funds made available pursuant to subdivision (b) of Section 99315 or for allocations for exclusive public mass transit guideways from funds available pursuant to Sections 199 and 199.1 of the Streets and Highways Code.

(b) The department shall evaluate the applications in accordance with criteria and procedures adopted by the commission and shall submit the applications and its recommendations thereon to the commission not later than February 1.

(c) The commission shall adopt criteria and procedures to be followed by the department in evaluating the applications.

(d) An application shall be considered timely if submitted by January 1 for a guideway project in a county that became eligible for those funds at an election held pursuant to Section 4 of Article XIX of the California Constitution during or prior to the immediately preceding November.

SEC. 8. Section 99318.2 of the Public Utilities Code is amended to read:

99318.2. (a) Not later than March 1, the commission shall hold

public hearings on the applications received from the department.

(b) Not later than April 1, the commission shall adopt a priority list of those applications it approves and submit that list, and recommend the amount necessary to fund that list pursuant to subdivision (b) of Section 99315, to the Legislature.

(c) Allocations to fund the applications shall be made on the basis of the adopted priority list.

SEC. 9. Section 99319 is added to the Public Utilities Code, to read:

99319. (a) If a rail capital improvement project proposed for funding by the department or a local agency includes as an element the addition or improvement of rail passenger service boarding platforms, those platforms shall be constructed in conformity with applicable rules and orders of the Public Utilities Commission and in such a manner that the top of each platform is not less than eight inches above the adjacent rails, unless the department makes a finding that the circumstances in a particular case warrant otherwise and obtains approval from the Public Utilities Commission for any deviation from its applicable rules and orders.

(b) The requirements of this section apply to all passenger service boarding platforms constructed with funds made available pursuant to Section 14031.6 of the Government Code, Sections 99234.5, 99234.9 and 99317 of this code, Section 199 of the Streets and Highways Code, and funds made available from the proceeds of state general obligation bonds issued for the purposes of rail capital improvements.

SEC. 10. Section 130554 of the Public Utilities Code is amended to read:

130554. (a) The commission shall give priority to construction of the overall transit system authorized in Los Angeles County Transportation Commission Ordinance No. 16. No more than 30 percent of the cost of the initial segment of the Los Angeles Metro Rail project shall be obtained from rail transit revenues to be obtained from revenue sources authorized in Los Angeles County Transportation Commission Ordinance No. 16. Furthermore, the commission shall not issue bonds in excess of one hundred million dollars ($100,000,000) to fund the Los Angeles Metro Rail project prior to December 31, 1986. The bonds shall be repaid from commission rail transit revenues. In the event that any bond proceeds are used for the system authorized by Los Angeles County Transportation Commission Ordinance No. 16, the Los Angeles County Transportation Commission and the Southern California Rapid Transit District shall report to the Legislature by December 31, 1986, on the status and funding of the Los Angeles Metro Rail project, including cost overruns, federal commitments and pledges for future funding, and local revenue sources.

No additional bonds shall be issued pursuant to this chapter after January 1, 1988, to finance portions of the Metro Rail project unless authorized by subsequent legislation.

(b) The commission may issue, pursuant to Los Angeles County

Transportation Commission Ordinance No. 49, if that ordinance is adopted by the voters at the November 6, 1990, general election, bonds payable from the proceeds of the tax imposed by that ordinance.

SEC. 11. Section 7251.2 is added to the Revenue and Taxation Code, to read:

7251.2. (a) Notwithstanding any other provision of law, in the case where the local transactions and use tax measures specified in subdivision (b) are both approved by the voters of the County of Los Angeles at the November 6, 1990, general election, and both measures are otherwise valid, the rate of each tax thereby imposed shall be set, for purposes of compliance with the 1 percent limitation of Section 7251.1, at one-fourth of 1 percent. If the limitation of Section 7251.1 is increased, the amount of the increase shall, on the date the increase is operative, be equally apportioned to increase the rate of each tax imposed by the measures specified in subdivision (b), up to a rate not to exceed one-half of 1 percent for each tax.

(b) This section shall apply only to the local transactions and use tax measures, to be submitted to the voters of the County of Los Angeles at the November 6, 1990, general election and popularly known as the following:

(1) "Los Angeles County Transportation Commission 1990 Fast-Track Anti-Gridlock Transit Improvement Proposition."

(2) "Local Communities Safety Act—Los Angeles County Regional Justice Facilities Financing Agency."

CHAPTER 1491

An act to amend Sections 47, 1812.203, and 1812.214 of the Civil Code, to amend Sections 409.1, 473.5, 484.060, 1005, 1141.24, 1255.010, 1255.020, 1255.070, and 2025 of the Code of Civil Procedure, to amend Section 12311 of the Corporations Code, to amend Section 703.5 of the Evidence Code, to amend Section 5432 of the Food and Agricultural Code, to amend Sections 1363, 6159, 71007.1, 72190, 72190.1, and 72190.2 of, to amend and repeal Section 71180.5 of, the Government Code, and to repeal Section 2 of Chapter 1313 of the Statutes of 1986, relating to courts.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 47 of the Civil Code is amended to read:

47. A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative or (2) judicial proceeding, or (3) in any other official proceeding authorized by law, or (4) in the

initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure; provided, that an allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information.

(d) By a fair and true report in a public journal, of (1) a judicial, (2) legislative, or (3) other public official proceeding, or (4) of anything said in the course thereof, or (5) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

SEC. 2. Section 1812.203 of the Civil Code is amended to read:

1812.203. (a) The seller of any seller assisted marketing plan shall pay an annual fee in the amount of one hundred dollars ($100) and annually file with the Attorney General a copy of the disclosure statements required under Sections 1812.205 and 1812.206, as well as a list of the names and resident addresses of those individuals who sell the seller assisted marketing plan on behalf of the seller. The first filing shall be made at least 30 days prior to placing any advertisement or making any other representations to prospective purchasers. The first filing shall not be deemed to be effective until a notice of filing has been issued by the Attorney General. The disclosure statements on file shall be updated through a new filing and payment of a fee in the amount of thirty dollars ($30), whenever material changes occur during the year following the annual filing and the updated filing shall include all disclosure statements required by Sections 1812.205 and 1812.206 and a list of the names and resident addresses of all current salespersons and all salespersons who have acted on behalf of the seller since the previous filing, whether the annual filing or an updated filing, indicating which salespersons are still active and which no longer act on behalf of the seller. Each seller of a seller assisted marketing plan shall file the

annual renewal filing, whether or not any update filings have been made, at least 10 days before one year has elapsed from the date of the notice of filing issued by the Attorney General, and at least 10 days before the same date every year thereafter. The annual renewal filing shall include all disclosure statements required by Sections 1812.205 and 1812.206 and a list of the names and addresses of the residences of all current salespersons and all salespersons who have acted on behalf of the seller since the previous filing (whether the annual filing or an updated filing), indicating which salespersons are still active and which no longer act on behalf of the seller. The annual renewal filing fee shall be one hundred dollars ($100). If an annual renewal filing is not filed as required, the previous filing shall be deemed to have lapsed and the seller shall be prohibited from placing any seller assisted marketing plan advertisements or making any other representations to prospective purchasers of seller assisted marketing plan until a new annual filing is made and a new notice of filing has been issued by the Attorney General.

(b) The Attorney General may send by certified mail to the address set forth in the seller assisted marketing plan filing an intent to issue a stop order denying the effectiveness of or suspending or revoking the effectiveness of any filing if he or she finds the following:

(1) That there has been a failure to comply with any of the provisions of this title.

(2) That the offer or sale of the seller assisted marketing plan would constitute a misrepresentation to, or deceit of, or fraud on, the purchaser.

(3) That any person identified in the filing has been convicted of an offense under paragraph (1) of subdivision (b) of Section 1812.206, or is subject to an order or has had a civil judgment entered against him or her as described in paragraphs (2) and (3) of subdivision (b) of Section 1812.206, and the involvement of that person in the sale or management of the seller assisted marketing plan creates an unreasonable risk to prospective purchasers.

(c) The notice referred to shall include facts supporting a suspension or revocation. If the seller assisted marketing plan does not submit to the Attorney General, under penalties of perjury signed by an owner or officer of the seller assisted marketing plan, within 10 days of receipt of the intent to issue a stop order, a refutation of each and every supporting fact set forth in the notice, and each such fact not refuted shall be deemed, for purposes of issuance of the order, an admission that the fact is true. If, in the opinion of the Attorney General, and based upon supporting facts not refuted by the seller assisted marketing plan, the plan is offered to the public without compliance with this title, the Attorney General may order the seller to desist and refrain from the further sale or attempted sale of the seller assisted marketing plan unless and until a notice of filing has been issued pursuant to this section. Until that time, the registration shall be void. The order shall be in effect

until and unless the seller assisted marketing plan files a proceeding in superior court pursuant to Section 1085 or 1094.5 of the Code of Civil Procedure or seeks other judicial relief and serves a copy of the proceeding upon the Attorney General.

SEC. 3. Section 1812.214 of the Civil Code is amended to read:

1812.214. (a) Every seller of seller-assisted marketing plans other than a California corporation shall file with the Attorney General an irrevocable consent appointing the Secretary of State or successor in office to act as the seller's attorney to receive service or any lawful process in any noncriminal suit, action or proceeding against the seller or the seller's successor, executor or administrator, which may arise under this title. When service is made upon the Secretary of State, it shall have the same force and validity as if served personally on the seller. Service may be made by leaving a copy of the process in the office of the Secretary of State, but it shall not be effective unless:

(1) The plaintiff forthwith sends by first-class mail a notice of the service upon the Secretary of State and a copy of the process to the defendant or respondent at the last address on file with the Attorney General; and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

(b) If, pursuant to subdivision (c) of Section 1812.204, a seller must obtain a surety bond or establish a trust account, the following procedures apply:

(1) If a bond is obtained, a copy of it shall be filed with the Attorney General; if a trust account is established, notification of the depository, the trustee and the account number shall be filed with the Attorney General.

(2) The bond or trust account required shall be in favor of the rson claiming against the trust account for a violation
of this title may maintain an action at law against the seller and the trustee. The surety or trustee shall be liable only for actual damages and not the punitive damages permitted under Section 1812.218. The aggregate liability of the trustee to all persons damaged by a seller's violation of this title shall in no event exceed the amount of the trust account.

(4) The bond or the trust account shall be in an amount equal to the total amount of the "initial payment" section of all seller-assisted marketing plan contracts the seller has entered into during the previous year or three hundred thousand dollars ($300,000), whichever is less, but in no case shall the amount be less than fifty thousand dollars ($50,000). The amount required shall be adjusted twice a year, no later than the tenth day of the first month of the

seller's fiscal year and no later than the tenth day of the seventh month of the seller's fiscal year. A seller need only establish a bond or trust account in the amount of fifty thousand dollars ($50,000) at the commencement of business and during the first six months the seller is in business. By the tenth day of the seller's seventh month in business, the amount of the bond or trust account shall be established as provided for herein as if the seller had been in business for a year.

(c) If, pursuant to subdivision (b) of Section 1812.210, a seller utilizes an escrow account to receive those portions of the downpayment in excess of 20 percent of the initial payment before delivery to the purchaser of the equipment, supplies or products or services to be furnished under the terms of the contract, the following procedures shall apply:

(1) The holder of the escrow account shall be independent of the seller, and the seller shall not have any authority to direct disbursements from the escrow account by the holder except upon written notification by the purchaser to the holder of the escrow account of the delivery of the equipment, supplies, or products as required by and within the time limits set forth in the seller assisted marketing plan contract.

(2) The name and address of the escrow account holder, the name of the institution, the branch and account number of the escrow account shall be reported to the Attorney General by the seller.

(3) Any person claiming against the escrow account for a violation of this title may maintain an action at law against the seller and the escrow account holder. The escrow account holder shall be liable only for actual damages and not the punitive damages permitted under Section 1812.218. The aggregate liability of the escrow account holder to all persons damaged by a seller's violation of this title shall in no event exceed the amount of the escrow account.

SEC. 4. Section 409.1 of the Code of Civil Procedure is amended to read:

409.1. At any time after notice of pendency of an action has been recorded pursuant to Section 409 or other law, the court in which the action is pending shall, upon motion of a party to the action supported by affidavit, order that the notice be expunged, unless the party filing the notice shows to the satisfaction of the court, by a preponderance of the evidence, that:

(a) The action does affect title to or right of possession of the real property described in the notice; and

(b) Insofar as the action affects title to or right of possession of the real property described in the notice, the party recording the notice has commenced or prosecuted the action for a proper purpose and in good faith. Notice of motion to expunge shall be served in the same manner, and at the same times, prescribed by subdivision (b) of Section 1005. The court shall determine the matter on the affidavits and counteraffidavits on file and upon such other proof as the court may permit. Upon recordation of a certified copy of the order

expunging a notice of pendency of the action in the office of the county recorder in which the notice of the pendency of the action was recorded neither the notice of the pendency of the action nor any information derived therefrom, prior to the recording of a certified copy of the judgment or decree issued therein, shall constitute constructive or actual notice of any of the matters contained therein, or of any of the matters relating to the action, or create any duty of inquiry in any person thereafter dealing with the property described therein.

The court, as a condition of granting or denying the motion to expunge, may require that the party prevailing upon the motion give the other party an undertaking of the nature, and in the amount as shall be fixed by the court, the undertaking to be to the effect that the prevailing party will indemnify the other party for all damages which he or she may incur if he or she ultimately prevails in the action.

SEC. 5. Section 473.5 of the Code of Civil Procedure is amended to read:

473.5. (a) When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.

(b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by subdivision (b) of Section 1005, and it shall be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action.

(c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.

SEC. 6. Section 484.060 of the Code of Civil Procedure is amended to read:

484.060. (a) If the defendant desires to oppose the issuance of the right to attach order sought by plaintiff or objects to the amount sought to be secured by the attachment, the defendant shall file and serve upon the plaintiff no later than five court days prior to the date set for the hearing a notice of opposition. The notice shall state the

grounds on which the defendant opposes the issuance of the order or objects to the amount sought to be secured by the attachment and shall be accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised. If the defendant fails to file a notice of opposition within the time prescribed, the defendant shall not be permitted to oppose the issuance of the order.

(b) If a defendant filing a notice of opposition desires to make any claim of exemption as provided in Section 484.070, the defendant may include that claim in the notice of opposition filed pursuant to this section.

(c) The plaintiff may file and serve upon the opposing party a reply two court days prior to the date set for the hearing.

SEC. 7. Section 1005 of the Code of Civil Procedure is amended to read:

1005. (a) Written notice shall be given, as prescribed in subdivision (b), for the following motions:

(1) Notice of Application and Hearing for Writ of Attachment under Section 484.040.

(2) Notice of Application and Hearing for Claim and Delivery under Section 512.030.

(3) Notice of Hearing for Claim of Exemption under Section 706.105.

(4) Motion to Quash Summons pursuant to subdivision (b) of Section 418.10.

(5) Motion for Determination of Good Faith Settlement pursuant to Section 877.6.

(6) Hearing for Discovery of Peace Officer Personnel Records pursuant to Section 1043 of the Evidence Code.

(7) Notice of Hearing of Third-Party Claim pursuant to Section 720.320.

(8) Motion for an Order to Attend Deposition more than 150 miles from deponent's residence pursuant to paragraph (3) of subdivision (e) of Section 2025.

(9) Notice of Hearing of Application for Relief pursuant to Section 946.6 of the Government Code.

(10) Motion to Set Aside Default or Default Judgment and for Leave to Defend Actions pursuant to Section 473.5.

(11) Motion to Expunge Notice of Pendency of Action pursuant to Section 409.1.

(12) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 15 calendar days before the time appointed for the hearing. However, if the notice is served by mail, the required 15-day period of notice before the time appointed for the hearing shall be increased by five days if the place of mailing and the place of address are within the

State of California, 10 days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 days if either the place of mailing or the place of address is outside the United States. Subdivision (a) of Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion governed by this section. All papers opposing a motion so noticed shall be filed with the court and served on each party at least five court days, and all reply papers at least two court days before the time appointed for the hearing.

The court, or a judge thereof, may prescribe a shorter time.

SEC. 8. Section 1141.24 of the Code of Civil Procedure is amended to read:

1141.24. In cases ordered to arbitration pursuant to subdivision (a) of Section 1141.16, absent a stipulation to the contrary, no discovery other than that permitted by Section 2034 is permissible after an arbitration award except by leave of court upon a showing of good cause.

SEC. 9. Section 1255.010 of the Code of Civil Procedure is amended to read:

1255.010. (a) At any time before entry of judgment, the plaintiff may deposit with the State Treasury the probable amount of compensation, based on an appraisal, that will be awarded in the proceeding. The appraisal upon which the deposit is based shall be one that satisfies the requirements of subdivision (b). The deposit may be made whether or not the plaintiff applies for an order for possession or intends to do so.

(b) Before making a deposit under this section, the plaintiff shall have an expert qualified to express an opinion as to the value of the property (1) make an appraisal of the property and (2) prepare a written statement of, or summary of the basis for, the appraisal.

(c) On noticed motion, or upon ex parte application in an emergency, the court may permit the plaintiff to make a deposit without prior compliance with subdivision (b) if the plaintiff presents facts by affidavit showing that (1) good cause exists for permitting an immediate deposit to be made, (2) an adequate appraisal has not been completed and cannot reasonably be prepared before making the deposit, and (3) the amount of the deposit to be made is not less than the probable amount of compensation that the plaintiff, in good faith, estimates will be awarded in the proceeding. In its order, the court shall require that the plaintiff comply with subdivision (b) within a reasonable time, to be specified in the order, and also that any additional amount of compensation shown by the appraisal required by subdivision (b) be deposited within that time.

SEC. 10. Section 1255.020 of the Code of Civil Procedure is amended to read:

1255.020. (a) On making a deposit pursuant to Section 1255.010, the plaintiff shall serve a notice of deposit on all parties who have

appeared in the proceeding and file with the court a proof of service together with the notice of deposit. The plaintiff shall so serve parties who appear thereafter on their appearance. The notice of deposit shall state that a deposit has been made and the date and the amount of the deposit. Service of the notice of deposit shall be made in the manner provided in Section 1255.450 for service of an order for possession.

(b) The notice of deposit shall be accompanied by a written statement or summary of the basis for the appraisal referred to in Section 1255.010.

(c) If the plaintiff has obtained an order under Section 1255.010 deferring completion of the written statement or summary, the plaintiff:

(1) On making the deposit, shall comply with subdivision (a) and include with the notice a copy of all affidavits on which the order was based.

(2) Upon completion of the written statement or summary, shall comply with subdivision (b).

SEC. 11. Section 1255.070 of the Code of Civil Procedure is amended to read:

1255.070. In lieu of depositing the money with the State Treasury as provided in Section 1255.010, upon written request of the plaintiff, the court shall order the money be deposited in the county treasury. If money is deposited in the State Treasury pursuant to Section 1255.010, it shall be held, invested, deposited, and disbursed in the manner specified in Article 10 (commencing with Section 16429) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code, and interest earned or other increment derived from its investment shall be apportioned and disbursed in the manner specified in that article. As between the parties to the proceeding, money deposited pursuant to this article shall remain at the risk of the plaintiff until paid or made payable to the defendant by order of the court.

SEC. 11.5. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a

plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a video tape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the video tape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of

a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving

party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party-deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice or, in unlawful detainer actions, not later than five days before trial, whichever is sooner. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend

and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video tape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the

deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audio tape or video tape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio tape or video tape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audio tape or video tape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence

Code.

(2) If the deposition is being recorded by means of audio tape or video tape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video tape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audio tape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio tape.

(F) The oath shall be administered to the deponent on camera or on the audio tape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio tape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio tape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio tape or video tape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audio taped or video taped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio taped or video taped deposition that are not designated by any party or that are ruled to be objectionable, the court may order

that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audio tape or video tape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a video tape or an audio tape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope

and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio tape or video tape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription,

unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio tape or video tape shall promptly (1) permit that other party to hear the audio tape or to view the video tape, and (2) furnish a copy of the audio tape or video tape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audio tape or video tape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record to waive the reading, correcting, and signing of the transcript of the testimony. For 30 days following this notice, the deponent may change the form or the substance of the answer to any question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same 30-day period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audio tape or video tape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply such signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audio taped or video taped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)", and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audio tape or video tape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audio tape or the video tape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audio tape or video tape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audio tape or video tape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who received, notice of the deposition may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to

testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 12. Section 12311 of the Corporations Code is amended to read:

12311. (a) The names of all corporations formed under this part shall include "cooperative." No corporation shall be formed under this part unless there is affixed or prefixed to its name some word or abbreviation which will indicate that it is a corporation, as distinguished from a natural person, a firm, or an unincorporated

association.

(b) No person shall adopt or use the word "cooperative" or any abbreviation or derivation thereof, or any word similar thereto, as part of the name or designation under which it does business in this state, unless incorporated as provided in this part or unless incorporated as a nonprofit cooperative association under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, as a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, as a limited-equity housing cooperative, as defined in Section 33007.5 of the Health and Safety Code, as a credit union or organization owned for the mutual benefit of credit unions, or under some other law of this state enabling it to do so. However, the foregoing prohibition shall be inapplicable to any credit union or organization owned for the mutual benefit of credit unions, any housing cooperative, the financing of which is insured, guaranteed, or provided, in whole or in part, by a public or statutorily chartered entity pursuant to a program created for housing cooperatives, a nonprofit corporation, a majority of whose membership is composed of cooperative corporations, or an academic institution that serves cooperative corporations.

(c) A domestic or foreign corporation or association which did business in this state under a name or designation including the word "cooperative" prior to September 19, 1939, and which conducts business on a cooperative basis substantially as set forth in this part, may continue to do business under that name or designation.

(d) Any person, firm, individual, partnership, trust, domestic corporation, foreign corporation, or association which did business in this state under a name or designation including the word "cooperative" prior to September 19, 1939, but which does not conduct business on a cooperative basis as contemplated by Section 12201 of this part, may continue to do business under that name or designation if the words "not organized under the law relating to cooperative corporations" are always placed immediately after the name or designation wherever it is used.

(e) Any foreign corporation, organized under and complying with the cooperative law of the state or other jurisdiction of its creation, may use the term "cooperative" in this state if it has complied with the laws of this state applicable to foreign corporations, insofar as those laws are applicable to it, and if it is doing business on a cooperative basis as contemplated by Section 12201.

SEC. 13. Section 703.5 of the Evidence Code is amended to read:

703.5. No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of

investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure.

SEC. 13.2. Section 5432 of the Food and Agricultural Code is amended to read:

5432. If a copy of the notice to abate a public nuisance, as described in Section 5401, is recorded and a copy is served upon or mailed to the holder of any encumbrance of record pursuant to this article, the lien is superior to all encumbrances, existing and future, except liens for taxes and assessments.

SEC. 13.4. Section 1363 of the Government Code is amended to read:

1363. (a) Unless otherwise provided, every oath of office certified by the officer before whom it was taken shall be filed within the time required as follows:

(1) The oath of all officers whose authority is not limited to any particular county, in the office of the Secretary of State.

(2) The oath of all officers elected or appointed for any county, and, except as provided in paragraph (4), of all officers whose duties are local, or whose residence in any particular county is prescribed by law, in the office of the county clerk of their respective counties.

(3) Each judge of a superior court, the county clerk, the executive officer or court administrator of the superior court, and the recorder shall file a copy of his or her official oath, signed with his or her own proper signature, in the office of the Secretary of State as soon as he or she has taken and subscribed his or her oath.

(4) The oath of all officers for any independent special district, as defined in Section 56044, in the office of the clerk or secretary of that district.

(b) Every oath of office filed pursuant to this section with the Secretary of State shall include the expiration date of the officer's term of office, if any. In the case of an oath of office for an appointed officer, if there is no expiration date set forth in the oath, or the officer leaves office before the expiration date, the appointing authority shall report in writing to the Secretary of State the officer's date of departure from office.

SEC. 13.6. Section 6159 of the Government Code is amended to read:

6159. (a) As used in this section:

(1) "Credit card" means any card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) "Card issuer" means any person who issues a credit card and purchases credit card drafts or the agent of such person for such purposes with respect to such card.

(3) "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay

obligations arising from the issuance of a credit card to another person.

(4) "Draft purchaser" means any person who purchases credit card drafts.

(b) Subject to the provisions of subdivision (c), a court, city, or other public agency may authorize the acceptance of a credit card for payment for the deposit of bail or for any fine for any offense not declared to be a felony, for payment of a filing fee or other court fee, or for payment of any towage or storage costs for a vehicle which has been removed from a highway, or from public or private property, as a result of parking violations, or for payment for services rendered by any city, county, or city and county.

(c) A court desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its county board of supervisors. A city desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its city council. Any other public agency desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of the governing body which has fiscal responsibility for such agency. After approval is obtained, a contract may be executed with one or more credit card issuers or draft purchasers. The contract shall provide for:

(1) The respective rights and duties of the court, city, county, city and county, or other public agency and card issuer or draft purchaser regarding the presentment, acceptability and payment of credit card drafts.

(2) The establishment of a reasonable means by which to facilitate payment settlements.

(3) The payment to the card issuer or draft purchaser of a reasonable fee or discount.

(4) Such other matters appropriately included in contracts with respect to the purchase of credit card drafts as may be agreed upon by the parties to the contract.

(d) The honoring of a credit card pursuant to subdivision (b) hereof constitutes payment of the amount owing to the court, city, county, city and county, or other public agency as of the date the credit card is honored provided the credit card draft is paid following its due presentment to a card issuer or draft purchaser.

(e) If any credit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the court, city, county, city and county, or other public agency for any reason, any record of payment made by the court, city, or other public agency honoring the credit card shall be void. Any receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder shall continue as an outstanding obligation as though no payment had been attempted.

(f) Fees or discounts provided for under paragraph (3) of subdivision (c) shall be deducted or accounted for prior to any statutory or other distribution of funds received from the card issuer

or draft purchaser.

SEC. 14. Section 71007.1 of the Government Code is amended to read:

71007.1. (a) Notwithstanding any other provision of law, the clerk of the municipal or justice court may record, at any time, on microform as defined in Section 69503, including electronic imaging equipment, pleadings, motions, instruments, books, depositions, transcripts, minute orders, complaints, dockets, registers of action, and any other records which are part of the court file or lodged with the municipal or justice court. A duplicate copy of any record reproduced on electronic and certified by the clerk of the court, which is in compliance with standards developed by the National Institute of Standards and Technology, shall be deemed an original. No additions, deletions, or changes to an original record stored on microform, including electronic imaging equipment are permitted.

(b) Upon making reproductions of court records in instances where the records reproduced do not constitute the docket or register of actions, the originals may be destroyed. The reproduction shall be deemed to be an original record.

(c) The originals of all papers and records copied as provided in subdivision (a) may be destroyed in comformity with Section 71008. The reproduced copies shall be deemed to be the original records of the court.

SEC. 15. Section 71180.5 of the Government Code, as amended by Section 2.5 of Chapter 481 of the Statutes of 1984, is amended to read:

71180.5. Upon the appointment, election, death, removal, or resignation of a judge of a municipal or justice court, the clerk or administrator of that municipal or justice court shall immediately give the Judges' Retirement System written notice thereof.

SEC. 16. Section 71180.5 of the Government Code, as amended by Chapter 395 of the Statutes of 1983, is repealed.

SEC. 17. Section 72190 of the Government Code is amended to read:

72190. Within the jurisdiction of the court and under the direction of the judges, commissioners of municipal courts or justice courts shall exercise all the powers and perform all of the duties authorized by law to be performed by commissioners of superior courts and such additional powers and duties as may be prescribed by law. At the direction of the judges, commissioners may have the same jurisdiction and exercise the same powers and duties as the judges of the court with respect to any infraction or small claims action. The commissioners of municipal courts or justice courts shall possess the same qualifications the law requires of a judge and shall hold office during the pleasure of the court appointing them and shall not engage in the private practice of law. They shall be ex officio deputy clerks.

Notwithstanding any other provision of law, a commissioner of a municipal court or a justice court of any judicial district in Los

Angeles County, San Diego County, San Bernardino County, Orange County, or Monterey County who has been duly appointed and has thereafter been retired for service, or a commissioner of a superior court in this state who has been duly appointed and has thereafter been retired for service, may be assigned by the presiding judge or sole judge of a municipal court or a justice court to serve as a court commissioner of such court for such periods of time as he or she is needed for the prompt and efficient discharge of the business of that court. While so serving, he or she shall be paid the full compensation of a court commissioner, payable as follows: He or she shall continue to receive his or her retirement allowance, and in addition the county shall pay him or her the amount equal to the difference between the retirement allowance and full compensation. That employment shall not operate to reinstate him or her as a member of the county retirement system or to terminate or suspend his or her retirement rights or allowance, and no deductions shall be made from his or her compensation as contributions to the retirement system.

SEC. 18. Section 72190.1 of the Government Code is amended to read:

72190.1. A commissioner of a municipal court or a justice court may conduct arraignment proceedings in the court if directed to perform those duties by the presiding or sole judge of the court, including the issuance and signing of bench warrants.

SEC. 19. Section 72190.2 of the Government Code is amended to read:

72190.2. If directed to perform such duties by the presiding judge or sole judge of the court, a commissioner of the municipal court or the justice court may issue and sign a bench warrant for the arrest of a defendant who fails to appear in court when required to appear by law or who fails to perform any act required by court order.

SEC. 20. Section 2 of Chapter 1313 of the Statutes of 1986 is repealed.

SEC. 21. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because counties have elected to and will receive funding through the 1990–91 fiscal year under the Brown-Presley Trial Court Funding Act in lieu of such reimbursement. If any county or counties elect not to receive that funding in 1991–92, then funding to reimburse their costs of complying with this act will be provided in the Budget Act of 1991.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local

agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1492

An act to amend Section 273 of the Penal Code, relating to crime.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 273 of the Penal Code is amended to read:

273. (a) It is a misdemeanor for any person or agency to offer to pay money or anything of value, or to pay money or anything of value, to a parent for the placement for adoption, for the consent to an adoption, or for cooperation in the completion of an adoption of his or her child.

(b) This section does not make it unlawful to pay the maternity-connected medical or hospital and necessary living expenses of the mother preceding and during confinement as an act of charity, as long as the payment is not contingent upon placement of the child for adoption, consent to the adoption, or cooperation in the completion of the adoption.

(c) It is a misdemeanor punishable by incarceration in the county jail for six months or a fine not exceeding two thousand five hundred dollars ($2,500) for any parent to obtain the financial benefits set forth in subdivision (b) with the intent to receive those financial benefits where there is an intent to do either of the following:

(1) Not complete the adoption.

(2) Not consent to the adoption.

(d) It is a misdemeanor punishable by incarceration in the county jail for six months or a fine not exceeding two thousand five hundred dollars ($2,500) for any parent to obtain the financial benefits set forth in subdivision (b) from two or more prospective adopting families or persons if either parent does both of the following:

(1) Knowingly fails to disclose to those families or persons that there are other prospective adopting families or persons interested in adopting the child, with knowledge that there is an obligation to disclose that information.

(2) Knowingly accepts the financial benefits set forth in

subdivision (b) if the aggregate amount exceeds the reasonable maternity-connected medical or hospital and necessary living expenses of the mother preceding and during the pregnancy.

(e) Any person who has been previously convicted of an offense described in subdivision (c) or (d), who is separately tried and convicted of a subsequent violation of subdivision (c) or (d), is guilty of a public offense punishable by imprisonment in the county jail or in state prison.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1493

An act to amend Sections 4353, 4550, 4700.10, 4701.1 and 5165 of, to amend, repeal, and add Sections 196, 4700, 4720, 4721, 4722, 4723, 4724, 4725, 4727, 4728, 4728.5, and 7010 of, to add Section 4366 to, and to add and repeal Section 4720.1 of, the Civil Code, to amend Sections 706.011 and 708.780 of the Code of Civil Procedure, to add and repeal Section 68514 of the Government Code, to amend Section 10125.5 of, to amend and repeal Section 10125.6 of, and to amend, repeal, and add Section 10061 of, the Health and Safety Code, and to amend Section 11489 of the Welfare and Institutions Code, relating to family law.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 196 of the Civil Code is amended to read:

196. (a) The father and mother of a child have an equal responsibility to support and educate their child in the manner suitable to the child's circumstances, taking into consideration the respective earnings or earning capacities of the parents.

(b) A judgment or order for support may, in appropriate circumstances, based on all relevant facts, require one parent to pay to the other parent a reasonable amount for the cost of the support of the child for the shortest of the following periods prior to the filing of the action:

(1) Three years.

(2) The date of the mailing of the birth certificate or the mailing of the written notification by the custodial parent, pursuant to subdivision (c).

(3) The date of separation of the parties until the date of the filing of the action.

This subdivision shall only apply to a child born on or after January 1, 1989.

(c) In circumstances where paternity has not been legally established or the parties were married but separated before the date of the child's date of birth, the court shall not award child support under subdivision (b), under any circumstances, unless the father has received a copy of the birth certificate as provided in Section 10061 of the Health and Safety Code, or the custodial parent has provided written notification by first-class mail, with return receipt requested, to the father of his paternity and of his obligation to support the child. In determining whether the judgment or order may be awarded, the court shall consider the diligence on the part of the custodial parent in bringing the action for support. Any support ordered pursuant to subdivision (b) shall not be in an amount that reduces a parent's ability to provide appropriate support for any other child for whom a duty of support is owed if the support is actually being paid. The court shall review the incomes and expenses of the parents each year, or other relevant period of time, for which support is being requested and may apply its guidelines and the child support laws in effect for each period. This subdivision shall only apply to a child born on or after January 1, 1989.

(d) As used in this section, "relevant facts" has the meaning given in subdivision (d) of Section 7010.

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 2. Section 196 is added to the Civil Code, to read:

196. (a) The father and mother of a child have an equal responsibility to support and educate their child in the manner suitable to the child's circumstances, taking into consideration the respective earnings or earning capacities of the parents.

(b) This section shall become operative January 1, 1993.

SEC. 3. Section 4353 of the Civil Code is amended to read:

4353. In any action for legal separation or dissolution or annulment of a marriage, the court has continuing jurisdiction to award community property or community debts to the parties that has not been previously adjudicated by a judgment therein. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community asset or debt omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community asset or debt, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or debt.

SEC. 4. Section 4366 is added to the Civil Code, to read:

4366. (a) Upon filing of a petition for dissolution of marriage, nullity of marriage, or for legal separation, or at any time during the proceeding, a party may transmit to, or the court may order transmittal to, a health, life, or disability insurance carrier or plan the following notice in substantially the following form:

"YOU ARE HEREBY NOTIFIED, PURSUANT TO A PENDING PROCEEDING, IN RE MARRIAGE OF _____, CASE NUMBER _____, FILED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____, THAT OWNERSHIP OF, OR BENEFITS PAYABLE UNDER, A POLICY OF HEALTH, LIFE, OR DISABILITY INSURANCE WHICH YOU HAVE ISSUED TO ONE OF THE PARTIES TO THIS PROCEEDING, POLICY NO. _____, IS AT ISSUE OR MAY BE AT ISSUE IN THE PROCEEDING.

YOU ARE HEREBY INSTRUCTED TO MAINTAIN THE NAMED BENEFICIARIES OR COVERED DEPENDENTS UNDER THE POLICY, UNLESS THE TERMS OF THE POLICY OR OTHER PROVISIONS OF LAW REQUIRE OTHERWISE, OR UNTIL RECEIPT OF A COURT ORDER, JUDGMENT, OR STIPULATION BETWEEN THE PARTIES PROVIDING OTHER INSTRUCTIONS.

YOU ARE FURTHER INSTRUCTED TO SEND NOTICE TO THE NAMED BENEFICIARIES, COVERED DEPENDENTS, OR OTHER SPECIFIED PERSONS UPON CANCELLATION, LAPSE, OR CHANGE OF THE COVERAGE, OR CHANGE OF DESIGNATED BENEFICIARIES UNDER THE POLICY."

(b) Upon the entry of an order or judgment in an action for dissolution of marriage, nullity of marriage, or for legal separation requiring a party to maintain existing health, life, or disability insurance coverage for a spouse or children or after an order or judgment in one of those proceedings requiring a party to purchase life or disability insurance and name the spouse or children as beneficiaries and upon receipt of the name, title, and address of the insurer, or the name of the plan's trustee, administrator, or agent for service of process, a party may transmit to, or the court may order transmittal to, the insurer or plan a copy of the order or judgment endorsed by the court, together with the following notice in substantially the following form:

"PURSUANT TO A PROCEEDING, IN RE MARRIAGE OF _____, CASE NUMBER _____, IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF _____, YOUR INSURED, _____, HAS BEEN ORDERED TO MAINTAIN THE EXISTING (HEALTH) (LIFE) (DISABILITY) INSURANCE

COVERAGE, POLICY NO. _____, IN FORCE FOR THE NAMED BENEFICIARIES OR COVERED DEPENDENTS AS SPECIFIED IN THE ATTACHED ORDER OR JUDGMENT.

THE ATTACHED ORDER OR JUDGMENT REQUIRES YOU TO MAINTAIN THE NAMED BENEFICIARIES UNDER THE POLICY AS IRREVOCABLE BENEFICIARIES OR COVERED DEPENDENTS OF THE POLICY AND YOU MUST ADMINISTER THE COVERAGE ACCORDINGLY, UNTIL THE DATE SPECIFIED, IF ANY, IN THE ORDER OR JUDGMENT, OR UNTIL THE RECEIPT OF A COURT ORDER, JUDGMENT, OR STIPULATION PROVIDING OTHER INSTRUCTIONS.

YOU ARE FURTHER INSTRUCTED TO SEND NOTICE TO THE NAMED BENEFICIARIES, COVERED DEPENDENTS, OR OTHER SPECIFIED PERSONS UPON ANY CANCELLATION, LAPSE, OR CHANGE OF COVERAGE, OR CHANGE OF DESIGNATED BENEFICIARIES UNDER THIS POLICY."

(c) Notice pursuant to this section may be sent by regular mail, postage prepaid, to the last known address of the covered dependents, named beneficiaries, or other specified persons who have requested receipt of notification.

(d) The insured or policyholder who is a party to the proceeding shall furnish to the other party the name, title, and address of the insurer or the insurer's agent for service of process.

SEC. 5. Section 4550 of the Civil Code is amended to read:

4550. A marriage may be dissolved by the summary dissolution procedure specified in this chapter when all of the following conditions exist at the time the proceeding is commenced:

(a) Either party has met the jurisdictional requirements of Sections 4530 and 4531 with regard to dissolution of marriage.

(b) Irreconcilable differences have caused the irremediable breakdown of the marriage and the marriage should be dissolved.

(c) There are no children of the relationship of the parties born before or during the marriage or adopted by the parties during the marriage, and the wife, to her knowledge, is not pregnant.

(d) The marriage is not more than five years in duration at the time the petition is filed.

(e) Neither party has any interest in real property wheresoever situated, with the exception of the lease of a residence occupied by either party, if it does not include an option to purchase, and if it terminates within one year from the date of the filing of the petition.

(f) There are no unpaid obligations in excess of four thousand dollars ($4,000) incurred by either or both of the parties after the date of their marriage, excluding the amount of any unpaid obligation with respect to an automobile.

(g) The total fair market value of community property assets, excluding all encumbrances and automobiles, including any deferred

compensation or retirement plan, is less than twenty-five thousand dollars ($25,000) and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of twenty-five thousand dollars ($25,000).

(h) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community, and have duly executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(i) The parties waive any rights to spousal support.

(j) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal and their rights to move for a new trial.

(k) The parties have read and understand the summary dissolution brochure provided for in Section 4556.

(*l*) The parties desire that the court dissolve the marriage.

On January 1, 1985, and on January 1 of each odd-numbered year thereafter, the amounts in subdivision (f) shall be adjusted to reflect any change in the value of the dollar. On January 1, 1993, and on January 1 of each odd-numbered year thereafter, the amounts in subdivision (g) shall be adjusted to reflect any change in the value of the dollar. The adjustments shall be made by multiplying the base amounts by the percentage change in the California Consumer Price Index as compiled by the Department of Industrial Relations, with the result rounded to the nearest thousand dollars. The Judicial Council shall compute and publish the amounts.

SEC. 6. Section 4700 of the Civil Code is amended to read:

4700. (a) (1) In any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 206, the court may order either or both parents to pay any amount necessary for the support, maintenance, and education of the child. At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for the support of a minor child is based. Upon a showing of good cause, the court may order the parent or parents required to make the payment of support to give reasonable security therefor. All payments of support shall be made by the person owing the support payment prior to the payment of any debts owing to creditors. Any order for child support may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. Any order for child support, as well as any order of modification or revocation of such an order, may be made retroactive to the date of the filing of the notice of motion or order to show cause therefor, or to any subsequent date, except as provided by federal law (42 U.S.C. Sec. 666(a)(9)). An order of modification or revocation may include an award of attorney fees and court costs to the prevailing party.

(2) A judgment or order for support may, in appropriate circumstances, based on all relevant facts, require one parent to pay

to the other parent a reasonable amount for the cost of the support of the child for the shortest of the following periods prior to the filing of the action:

(A) Three years.

(B) The date of the mailing of the birth certificate or the mailing of the written notification by the custodial parent, pursuant to paragraph (3).

(C) The date of separation of the parties until the date of the filing of the action.

This paragraph shall only apply to a child born on or after January 1, 1989.

(3) In circumstances where paternity has not been established or the parties were married but separated before the child's date of birth, the court shall not award child support under paragraph (2), under any circumstances, unless the father has received a copy of the birth certificate as provided in Section 10061 of the Health and Safety Code, or the custodial parent has provided written notification by first-class mail, with return receipt requested, to the father of his paternity and of his obligation to support the child. In determining whether the judgment or order may be awarded, the court shall consider the diligence on the part of the custodial parent in bringing the action for support. Any support ordered pursuant to paragraph (2) shall not be in an amount that reduces a parent's ability to provide appropriate support for any other child for whom a duty of support is owed if the support is actually being paid. The court shall review the incomes and expenses of the parents each year, or other relevant period of time, for which support is being requested and may apply its guidelines and the child support law in effect for each period. This paragraph shall only apply to a child born on or after January 1, 1989.

As used in this paragraph, "relevant facts" has the meaning given in subdivision (d) of Section 7010.

(b) The court may order financial compensation for periods when a parent fails to assume the caretaker responsibility, or when a parent has been thwarted by the other parent when attempting to exercise visitation or custody rights, contemplated by a custody or visitation order entered pursuant to this part, including, but not limited to, an order for joint physical custody or by a written or oral agreement between the parents. The compensation shall be limited to (1) the reasonable expenses incurred for, or on behalf of, a child, resulting from the other parent's failure to assume his or her caretaker responsibility or (2) reasonable expenses incurred by a parent for, or on behalf of, a child resulting from the other parent's thwarting his or her efforts to exercise visitation or custody rights. These expenses may include the value of caretaker services, but are not limited to the cost of services provided by a third party during the relevant period.

The compensation may be requested by noticed motion or an order to show cause and shall allege, under penalty of perjury, a minimum of one hundred dollars ($100) of expenses so incurred or,

at least three occurrences of failure to exercise visitation or custody rights or at least three occurrences of the thwarting of efforts to exercise visitation or custody rights within the six months prior to filing of the motion or order.

Attorney's fees shall be awarded to the prevailing party, upon a showing of the nonprevailing party's ability to pay.

(c) When a court orders a person to make specified payments for support of a child during the child's minority, or until the child is married or otherwise emancipated, or until the death of, or the occurrence of a specified event as to, a child for whom support is authorized under Section 206, the liability of the person ordered to pay support terminates upon the happening of the contingency. If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make those payments, or the attorney of record of the person ordered to pay support, of the happening of the contingency, and continues to accept support payments, the person shall refund any and all moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make the payments, or his or her attorney of record, of the happening of the contingency.

(d) In the event obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support, maintenance, and education of the child, as the court may deem just.

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 6.5. Section 4700 of the Civil Code is amended to read:

4700. (a) (1) In any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 196, 196.5, or 206, the court may order either or both parents to pay any amount necessary for the support, maintenance, and education of the child. At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for the support of a minor child is based. Upon a showing of good cause, the court may order the parent or parents required to make the payment of support to give reasonable security therefor. All payments of support shall be made by the person owing the support payment prior to the payment of any debts owing to creditors. Any order for child support may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. Any order for child support, as well as any order of modification or revocation of such an order, may be made retroactive to the date of the filing of the notice of motion or order to show cause therefor, or to any subsequent date,

except as provided by federal law (42 U.S.C. Sec. 666(a)(9)). An order of modification or revocation may include an award of attorney fees and court costs to the prevailing party.

(2) A judgment or order for support may, in appropriate circumstances, based on all relevant facts, require one parent to pay to the other parent a reasonable amount for the cost of the support of the child for the shortest of the following periods prior to the filing of the action:

(A) Three years.

(B) The date of the mailing of the birth certificate or the mailing of the written notification by the custodial parent, pursuant to paragraph (3).

(C) The date of separation of the parties until the date of the filing of the action.

This paragraph shall only apply to a child born on or after January 1, 1989.

(3) In circumstances where paternity has not been established or the parties were married but separated before the child's date of birth, the court shall not award child support under paragraph (2), under any circumstances, unless the father has received a copy of the birth certificate as provided in Section 10061 of the Health and Safety Code, or the custodial parent has provided written notification by first-class mail, with return receipt requested, to the father of his paternity and of his obligation to support the child. In determining whether the judgment or order may be awarded, the court shall consider the diligence on the part of the custodial parent in bringing the action for support. Any support ordered pursuant to paragraph (2) shall not be in an amount that reduces a parent's ability to provide appropriate support for any other child for whom a duty of support is owed if the support is actually being paid. The court shall review the incomes and expenses of the parents each year, or other relevant period of time, for which support is being requested and may apply its guidelines and the child support law in effect for each period. This paragraph shall only apply to a child born on or after January 1, 1989.

As used in this paragraph, "relevant facts" has the meaning given in subdivision (d) of Section 7010.

(b) The court may order financial compensation for periods when a parent fails to assume the caretaker responsibility, or when a parent has been thwarted by the other parent when attempting to exercise visitation or custody rights, contemplated by a custody or visitation order entered pursuant to this part, including, but not limited to, an order for joint physical custody or by a written or oral agreement between the parents. The compensation shall be limited to (1) the reasonable expenses incurred for, or on behalf of, a child, resulting from the other parent's failure to assume his or her caretaker responsibility or (2) reasonable expenses incurred by a parent for, or on behalf of, a child resulting from the other parent's thwarting his or her efforts to exercise visitation or custody rights. These expenses

may include the value of caretaker services, but are not limited to the cost of services provided by a third party during the relevant period.

The compensation may be requested by noticed motion or an order to show cause and shall allege, under penalty of perjury, a minimum of one hundred dollars ($100) of expenses so incurred or, at least three occurrences of failure to exercise visitation or custody rights or at least three occurrences of the thwarting of efforts to exercise visitation or custody rights within the six months prior to filing of the motion or order.

Attorney's fees shall be awarded to the prevailing party, upon a showing of the nonprevailing party's ability to pay.

(c) When a court orders a person to make specified payments for support of a child during the child's minority, or until the child is married or otherwise emancipated, or until the death of, or the occurrence of a specified event as to, a child for whom support is authorized under Section 196, 196.5, or 206, the liability of the person ordered to pay support terminates upon the happening of the contingency. If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make those payments, or the attorney of record of the person ordered to pay support, of the happening of the contingency, and continues to accept support payments, the person shall refund any and all moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make the payments, or his or her attorney of record, of the happening of the contingency.

(d) In the event obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support, maintenance, and education of the child, as the court may deem just.

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 7. Section 4700 is added to the Civil Code, to read:

4700. (a) In any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 206, the court may order either or both parents to pay any amount necessary for the support, maintenance, and education of the child. At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for the support of a minor child is based. Upon a showing of good cause, the court may order the parent or parents required to make the payment of support to give reasonable security therefor. All payments of support shall be made by the person owing the support payment prior to the payment of any debts owing to creditors. Any order for child support may be modified or revoked as the court may deem necessary, except as to any amount that may

have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. Any order for child support, as well as any order of modification or revocation of such an order, may be made retroactive to the date of the filing of the notice of motion or order to show cause therefor, or to any subsequent date, except as may otherwise be prescribed by federal law (42 U.S.C. Sec. 666(a)(9)). An order of modification or revocation may include an award of attorney fees and court costs to the prevailing party.

(b) The court may order financial compensation for periods when a parent fails to assume the caretaker responsibility, or when a parent has been thwarted by the other parent when attempting to exercise visitation or custody rights, contemplated by a custody or visitation order entered pursuant to this part, including, but not limited to, an order for joint physical custody or by a written or oral agreement between the parents. The compensation shall be limited to (1) the reasonable expenses incurred for, or on behalf of, a child, resulting from the other parent's failure to assume his or her caretaker responsibility or (2) reasonable expenses incurred by a parent for or on behalf of a child resulting from the other parent's thwarting his or her efforts to exercise visitation or custody rights. These expenses may include the value of caretaker services, but are not limited to the cost of services provided by a third party during the relevant period.

The compensation may be requested by noticed motion or an order to show cause and shall allege, under penalty of perjury, a minimum of one hundred dollars ($100) of expenses so incurred or, at least three occurrences of failure to exercise visitation or custody rights or at least three occurrences of the thwarting of efforts to exercise visitation or custody rights within the six months prior to filing of the motion or order.

Attorney's fees shall be awarded to the prevailing party, upon a showing of the nonprevailing party's ability to pay.

(c) When a court orders a person to make specified payments for support of a child during the child's minority, or until the child is married or otherwise emancipated, or until the death of, or the occurrence of a specified event as to, a child for whom support is authorized under Section 206, the liability of the person ordered to pay support terminates upon the happening of the contingency. If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make those payments, or the attorney of record of the person ordered to pay support, of the happening of the contingency, and continues to accept support payments, the person shall refund any and all moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make the payments, or his or her attorney of record, of the happening of the contingency.

(d) In the event obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support, maintenance and education of the child, as the court may deem just.

(e) This section shall become operative January 1, 1993.

SEC. 8. Section 4700.10 of the Civil Code is amended to read:

4700.10. (a) As used in this section:

(1) "Custodial parent" means a party awarded physical custody of a child.

(2) "Deferred sale of home order" means an order that temporarily delays the sale and awards the temporary exclusive use and possession of the family home to a custodial parent of minor children, or children for whom support is authorized under Section 196 or 206, whether or not the custodial parent has sole or joint custody, in order to minimize the adverse impact of dissolution or legal separation on the welfare of the children.

(3) "Resident parent" means a party who has requested or who has already been awarded a deferred sale of home order.

(b) In any case in which one of the parties has requested a deferred sale of home order pursuant to this section, the court shall first determine whether it is economically feasible to maintain the payments of any note secured by a deed of trust, property taxes, insurance for the home during the period the sale of the home is deferred, and the condition of the home comparable to that at the time of trial. In making this determination, the court shall consider the resident parent's income, the availability of spousal support, child support, or both spousal and child support, and any other sources of funds available to make those payments. In requiring this determination, it is the intent of the Legislature to avoid the likelihood of possible defaults on the payments of notes and resulting foreclosures, to avoid inadequate insurance coverage, to prevent deterioration of the condition of the family home, and to prevent any other circumstance which would jeopardize both parents' equity in the home. After making this determination that it is economically feasible to consider ordering a deferred sale of the family home, the court in exercising its discretion to grant or deny a deferred sale of home order, shall consider all of the following:

(1) The length of time the child has resided in the home.

(2) The child's placement or grade in school.

(3) The accessibility and convenience of the home to the child's school and other services or facilities used by and available to the child, including child care.

(4) Whether the home has been adapted or modified to accommodate any physical disabilities of a child or a resident parent in a manner such that a change in residence may adversely affect the ability of the resident parent to meet the needs of the child.

(5) The emotional detriment to the child associated with a change in residence.

(6) The extent to which the location of the home permits the resident parent to continue his or her employment.

(7) The financial ability of each parent to obtain suitable housing.

(8) The tax consequences to the parents.

(9) The economic detriment to the nonresident parent in the event of a deferred sale of home order.

(10) Any other factors the court deems just and equitable.

(c) Upon a determination pursuant to subdivision (b) that a deferred sale of home order is necessary in order to minimize the adverse impact of dissolution or legal separation on the child, the court may make such an order to a custodial parent. The order shall include the duration of the order; may include the legal description and assessor's parcel number of the real property which is subject to the order; and may be recorded in the office of the county recorder of the county in which the real property is located. Such an order may be considered to constitute additional child support pursuant to Section 4728.5.

(d) The court may make an order specifying the parties' respective responsibilities for the payment of the costs of routine maintenance and capital improvements.

(e) Except as otherwise agreed to by the parties in writing, the following shall apply:

(1) A deferred sale of home order may be modified or terminated at any time at the discretion of the court.

(2) If the party awarded the deferred sale of home order remarries, or if there is otherwise a change in circumstances affecting the determinations made pursuant to subdivision (b) or affecting the economic status of the parties or the children on which the award is based, a rebuttable presumption, affecting the burden of proof, is created that further deferral of the sale is no longer an equitable method of minimizing the adverse impact of the dissolution or legal separation on the children.

(f) In making an order pursuant to this section, the court shall reserve jurisdiction to determine any and all issues that arise with respect to the deferred sale of home order including, but not limited to, the maintenance of the home and the tax consequences to each party.

(g) This section is applicable regardless of whether the deferred sale of home order is made before or after January 1, 1989.

SEC. 8.5. Section 4701.1 of the Civil Code is amended to read:

4701.1. (a) (1) Subject to subdivisions (b) and (c), in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, upon an order to show cause or notice of motion, application, and declaration signed under penalty of perjury by the person or county officer to whom support has been ordered to have been paid stating that the parent or parents so ordered is in arrears in payment in a sum equal to the amount of 60 days of payments, the court shall issue to the parent or parents ordered to pay support, following notice and opportunity for a hearing, an order requiring that the parent or parents deposit assets to secure future support payments with the district attorney, other

county officer, or any other trustee designated by the court. Upon request of any party the court may also issue an ex parte restraining order as specified in subdivision (d). Upon deposit of any asset which is not readily convertible into money, the court may, not less than 20 days after serving the obligor-parent or parents with written notice and a hearing, order the sale of that asset or assets and the deposit of the proceeds with the person designated under this subdivision. For purposes of Section 701.545 of the Code of Civil Procedure, the date of the issuance of the order to deposit assets shall be construed as the date notice of levy on an interest in real property was served on the judgment debtor. When the asset ordered to be deposited is real property, the order shall be certified as an abstract of judgment in accordance with Section 674 of the Code of Civil Procedure. A deposit of real property is made effective by recordation of the certified abstract with the county recorder. The deposited real property and the rights, benefits, and liabilities attached to that property shall continue in the possession of the legal owner.

(2) Upon an obligor-parent's failure, within the time specified by the court, to make reasonable efforts to cure the default in child support payments or to comply with a court-approved payment plan, if payments continue in the arrears, the district attorney, county officer, or trustee designated by the court shall, not less than 25 days after providing the obligor-parent or parents with a written notice served personally or with return receipt requested, unless a motion or order to show cause has been filed to stop the use or sale, use the money or sell or otherwise process the deposited assets for an amount sufficient to pay the arrearage and the amount ordered by the court for the support, maintenance, and education of the minor child currently due.

Assets which have been deposited pursuant to an order issued in accordance with paragraph (1) shall be construed as being assets subject to levy pursuant to Article 6 (commencing with Section 701.510) of Chapter 3 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The sale of assets shall be conducted in accordance with Article 6 (commencing with Section 701.510) and Article 7 (commencing with Section 701.810) of Chapter 3 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(3) The district attorney, county officer, or trustee designated by the court may deduct from the deposited money the sum of one dollar ($1) for each payment made pursuant to paragraph (2).

(4) An obligor-parent alleged to be in arrears under this section may employ any of the following grounds as a defense to the motion filed pursuant to paragraph (1) or as a basis for filing a motion to stop a sale or use of assets under paragraph (2):

(A) Child support payments are not in arrears.

(B) Laches.

(C) There has been a change in the custody of the children.

(D) There is a pending motion for reduction in support due to a reduction in income.

(E) Illness or disability.

(F) Unemployment.

(G) Serious adverse impact on the immediate family of the obligor-parent residing with the obligor-parent, that outweighs the impact of denial of the motion or stopping the sale on obligee.

(H) Serious impairment of the ability of the obligor-parent to generate income.

(I) Other emergency conditions.

An obligor-parent must rebut the presumptions that nonpayment of child support was willful, without good faith, and that the obligor had the ability to pay the support.

An obligor-parent may file a motion to stop the use of the money or the sale of the asset pursuant to paragraph (2) within 15 days after service of notice on him or her pursuant to paragraph (2). The clerk of the court shall set the motion for hearing not less than 20 days after service on the person or county officer to whom support has been ordered to have been paid.

(b) The court shall issue an order pursuant to paragraph (1) of subdivision (a) upon a determination that one or more of the following conditions exists:

(1) The obligor-parent is not receiving salary or wages subject to an assignment pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 and there is reason to believe that he or she has earned income from some source of employment.

(2) An assignment of a portion of salary or wages pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5, would not be sufficient to meet the amount of the support obligation, for reasons other than a change of circumstances which would qualify for a reduction in the amount of child support ordered.

(3) The job history of the obligor-parent shows that an assignment of a portion of salary or wages pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5, would be difficult to enforce or would not be a practical means for securing the payment of the support obligation, due to circumstances including, but not limited to, multiple concurrent or consecutive employers.

(c) The designation of assets subject to an order pursuant to paragraph (1) of subdivision (a) shall be based upon concern for maximizing the liquidity and ready conversion into cash of the deposited asset. In all instances, the assets shall include a sum of money up to or equal in value to one year of support payments or six thousand dollars ($6,000), whichever is less, or any other assets, personal or real, designated by the court which equal in value up to one year of payments for support of the minor child, or six thousand dollars ($6,000), whichever is less, subject to Section 703.070 of the Code of Civil Procedure. In lieu of depositing cash or other assets as provided above, the obligor-parent may, if approved by the court, provide a performance bond secured by any real property or other assets of the parent and equal in value to one year of payments.

(d) During the pendency of any proceeding pursuant to this

section, and upon the application of either party in the manner provided by Section 527 of the Code of Civil Procedure, the court may, without a hearing, issue ex parte orders restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if the order is directed against a party, requiring him or her to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures. The matter shall be made returnable not later than 20 days, or if good cause appears to the court, 25 days from the date of the order at which time the ex parte order shall expire. Any order issued pursuant to this section shall state on its face the date of expiration of the order, which shall expire in one year or upon deposit of assets or money pursuant to paragraph (1) of subdivision (a), whichever first occurs. The court, at the hearing, shall determine for which property the obligor-parent shall be required to report extraordinary expenditures and shall specify what is deemed an extraordinary expenditure for purposes of this subdivision.

(e) Any district attorney, county officer, or trustee designated by the court pursuant to subdivision (a) who is responsible for any money or property and for any disbursements under this section shall not be held liable for any action undertaken in good faith and in conformance with this section.

(f) The district attorney, county officer, or trustee designated by the court shall return all assets subject to court order under paragraph (1) of subdivision (a) to the obligor-parent or parents when both of the following occur:

(1) One year has elapsed since the court issued the order described under paragraph (1) of subdivision (a).

(2) The obligor-parent or parents have made all support payments on time during that one-year period.

When the above criteria have been satisfied and when the deposited asset was real property, the district attorney, county officer, or trustee designated by the court shall prepare a release in accordance with Section 697.370 of the Code of Civil Procedure and shall request the clerk of the court where the order to deposit assets was rendered to certify the release and record it in the office of the county recorder.

(g) The district attorney, county officer, or trustee shall, if requested by an obligor-parent, prepare a statement setting forth disbursements and receipts made under this section.

(h) If the district attorney, county officer, trustee, or person designated under subdivision (a) incurs fees or costs under this section which are not compensated by the deduction under paragraph (3) of subdivision (a), including, but not limited to, fees or costs incurred in any sale of assets pursuant to subdivision (a) and in the preparation of a statement pursuant to subdivision (g), the

court shall, hear not less than 20 days after service upon the obligor-parent of the notice of motion or order to show cause by the district attorney, county officer, trustee, or person designated under subdivision (a) incurring the fees or costs, and order the obligor-parent or parents to pay reasonable fees and costs. Fees and costs ordered to be paid by the court under this subdivision shall be in addition to any deposit made under subdivision (a), but shall not exceed 5 percent of one year's child support obligation or the total amount ordered deposited under paragraph (1) of subdivision (a), whichever is less.

(i) The purpose of this section is to provide an extraordinary remedy for cases of bad faith failure to pay child support obligations.

SEC. 9. Section 4720 of the Civil Code is amended to read:

4720. The Legislature hereby finds and declares that:

(a) The State of California has no single standard to promote equitable, adequate child support awards.

(b) The current method of setting child support awards has led to substantial variation in these awards among families with similiar circumstances and resources.

(c) In situations where a parent fails to meet his or her child support obligations, or where the award levels are inadequate, the state may ultimately be required to bear the financial responsibility for the child.

(d) The Aid to Families with Dependent Children program (hereinafter referred to as AFDC) established by the Burton-Miller Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) is the state program most likely to be affected by the failures and inadequacies of child support awards, and is the program by which the cost of maintaining those children adversely affected by these failures and inadequacies would otherwise be provided. Furthermore, the minimum amounts necessary for the support, maintenance, and care of children have been established by the Legislature in the monthly needs standards set forth in the AFDC program. Therefore, it is the intent of the Legislature that a system of standards and procedures shall be established which provide for a uniform determination of child support awards throughout the state, and which assures that, dependent upon the financial ability of each parent to do so, no child receives a support award less than would otherwise be established as the need for that child under the AFDC program.

The level of child support resulting from the application of the formula established by this chapter shall be treated as the minimum award for support. It is the intention of the Legislature that the court shall use the guidelines in use in its county to establish the child support award. However, in no event shall the court award less than the mandatory minimum child support allowable pursuant to this chapter. In setting an award higher than the mandatory minimum, the court shall be guided by the criteria set forth in applicable statutes, relevant case law, and state and local guidelines, so long as

they are not in conflict with this chapter.

(e) It is the intention of the Legislature that the courts shall adhere to the principles set forth in this chapter and shall depart from them only in exceptional circumstances. A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life. In this regard, the Legislature recognizes that a parent's circumstances and station in life are dependent upon a variety of factors, including his or her earned and unearned income; earning capacity; assets; and the income of his or her subsequent spouse or nonmarital partner, to the extent that the obligated parent's basic living expenses are met by the spouse or other person, thus increasing the parent's disposable income and therefore his or her ability to pay more than the mandatory minimum child support award established by this chapter. The court shall take into consideration the needs of the supported child or children in determining whether circumstances give rise to an increase or decrease in a child support award.

(f) This section shall remain in effect only until the operative date of the rules of court incorporating the guidelines specified in Section 4720.1, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 10. Section 4720 is added to the Civil Code, to read:

4720. The Legislature hereby finds and declares that:

(a) The State of California has no single standard to promote equitable, adequate child support awards.

(b) The current method of setting child support awards has led to substantial variation in these awards among families with similiar circumstances and resources.

(c) In situations where a parent fails to meet his or her child support obligations, or where the award levels are inadequate, the state may ultimately be required to bear the financial responsibility for the child.

This section shall become operative on the operative date of the rules of court incorporating the guidelines specified in Section 4720.1, and shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 11. Section 4720 is added to the Civil Code, to read:

4720. The Legislature hereby finds and declares that:

(a) The State of California has no single standard to promote equitable, adequate child support awards.

(b) The current method of setting child support awards has led to substantial variation in these awards among families with similiar circumstances and resources.

(c) In situations where a parent fails to meet his or her child support obligations, or where the award levels are inadequate, the state may ultimately be required to bear the financial responsibility for the child.

(d) The Aid to Families with Dependent Children program

(hereinafter referred to as AFDC) established by the Burton-Miller Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) is the state program most likely to be affected by the failures and inadequacies of child support awards, and is the program by which the cost of maintaining those children adversely affected by these failures and inadequacies would otherwise be provided. Furthermore, the minimum amounts necessary for the support, maintenance, and care of children have been established by the Legislature in the monthly needs standards set forth in the AFDC program. Therefore, it is the intent of the Legislature that a system of standards and procedures shall be established which provide for a uniform determination of child support awards throughout the state, and which assures that, dependent upon the financial ability of each parent to do so, no child receives a support award less than would otherwise be established as the need for that child under the AFDC program.

The level of child support resulting from the application of the formula established by this chapter shall be treated as the minimum award for support. It is the intention of the Legislature that the court shall use the guidelines in use in its county to establish the child support award. However, in no event shall the court award less than the mandatory minimum child support allowable pursuant to this chapter. In setting an award higher than the mandatory minimum, the court shall be guided by the criteria set forth in applicable statutes, relevant case law, and state and local guidelines, so long as they are not in conflict with this chapter.

(e) It is the intention of the Legislature that the courts shall adhere to the principles set forth in this chapter and shall depart from them only in exceptional circumstances. A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life. In this regard, the Legislature recognizes that a parent's circumstances and station in life are dependent upon a variety of factors, including his or her earned and unearned income; earning capacity; assets; and the income of his or her subsequent spouse or nonmarital partner, to the extent that the obligated parent's basic living expenses are met by the spouse or other person, thus increasing the parent's disposable income and therefore his or her ability to pay more than the mandatory minimum child support award established by this chapter. The court shall take into consideration the needs of the supported child or children in determining whether circumstances give rise to an increase or decrease in a child support award.

This section shall become operative on January 1, 1993.

SEC. 12. Section 4720.1 is added to the Civil Code, to read:

4720.1. (a) (1) It is the intention of the Legislature to ensure that the State of California remains in compliance with federal regulations for child support guidelines. Due to the urgency of ensuring compliance with these regulations, the Legislature hereby directs the Judicial Council to adopt rules of court incorporating

statewide guidelines that comply with applicable federal regulations at the earliest date possible, but no later than 60 days after the effective date of the act that adds this section. Except as necessary to meet new federal regulations or to address the findings of the study on guidelines commissioned by the Judicial Council in 1989, the initial guidelines to be established shall be those promulgated by the Judicial Council pursuant to subdivision (b) of Section 4724. Except as necessary to meet new federal regulations or to address the findings of the study on guidelines commissioned by the Judicial Council in 1989, the initial guidelines shall retain the intent of Sections 4721, 4723, 4727, 4728, and 4728.5. This legislative directive shall not be construed to mean that the State of California is not currently in compliance with the child support guideline requirements contained in Section 667 of Title 42 of the United States Code. Any guidelines proposed or adopted by the Judicial Council shall not result in child support awards less than the current mandatory minimum child support awards as established by the Agnos Child Support Standards Act of 1984.

(2) It is the intention of the Legislature that the courts shall adhere to the guidelines adopted by the Judicial Council pursuant to this section and shall depart from them only in exceptional circumstances. A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life. In this regard, the Legislature recognizes that a parent's circumstances and station in life are dependent upon a variety of factors, including his or her earned and unearned income; earning capacity; assets; and the income of his or her subsequent spouse or nonmarital partner, to the extent that the obligated parent's basic living expenses are met by the spouse or other person, thus increasing the parent's disposable income.

(3) In setting levels of child support, the judicial council shall be guided by the legislative intent that children share in their parents' standard of living.

(b) The Judicial Council shall study and submit a report to the Legislature on or before December 1, 1991, which shall include a proposal for legislation, regarding a system of permanent child support guidelines to comply with federal law. This report shall address the respective continuing roles of the Judicial Council and the Legislature in maintaining, amending, or otherwise managing the statewide child support guidelines.

(c) In developing guidelines, the Judicial Council shall consult with a broad cross-section of groups involved in child support issues, including, but not limited to, the following: custodial and noncustodial parents; representatives of established women's rights and fathers' rights groups; representatives of established organizations which advocate for the economic well-being of children; members of the judiciary, district attorney's offices, the Attorney General's office, and the State Department of Social Services; certified family law specialists; academicians specializing in

family law; persons representing low-income parents; and, persons representing recipients of Aid to Families with Dependent Children (AFDC) seeking child support services. The advisory committee shall be balanced by gender and geographic representation, to the extent possible.

(d) In developing the initial guidelines, the Judicial Council is encouraged to seek public comment on the proposed initial guidelines. In developing the recommendations for the permanent guidelines, the Judicial Council shall seek public comment on the permanent guidelines.

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 13. Section 4721 of the Civil Code is amended to read:

4721. (a) In determining the ability of parents to pay the mandatory minimum child support award and to calculate the actual monthly payments to be made by each parent, all of the following provisions apply:

(1) The annual gross income of each parent shall be determined and then adjusted to obtain the annual net disposable income. To determine and apportion the mandatory minimum child support award, as defined in Section 4722, the court shall also consider, to the extent consistent with the best interests of the child or children, the earning capacity of either or both parents. The annual gross income means income from whatever source derived, except as specified in paragraph (2), and includes, but is not limited to, all of the following:

(A) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, and spousal support actually received from a person not a party to the order.

(B) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(C) To the extent that income derived from subparagraphs (A) and (B) is insufficient to produce a mandatory minimum child support award at the AFDC standard for the same number of children, upon the request of either party, the court may consider investment assets of either or both parties which could be liquidated. To determine and apportion the mandatory minimum child support award at the AFDC level, the court shall also consider, to the extent consistent with the best interests of all of the children, the earning capacity of either or both parents.

(2) Annual gross income shall not include any income derived from child support payments actually received and income derived from any public assistance program, eligibility for which is based on a determination of need.

(3) The annual net disposable income of each parent shall be computed by deducting from his or her annual gross income the

actual amounts attributable only to the following items, after which the remainder shall be adjusted to reflect the monthly net disposable income of each parent:

(A) The state and federal income taxes attributed to the parent. Federal and state income tax deductions shall bear an accurate relationship to the tax status of the parties (that is, single, married, married filing separately, or head of household) and number of dependents.

(B) Deductions attributed to the employee's contribution or the self-employed worker's contribution pursuant to the Federal Insurance Contributions Act (FICA), or an amount not to exceed that allowed under FICA for persons not subject to FICA, provided that the deducted amount is used to secure retirement or disability benefits for the parent.

(C) Deductions for mandatory union dues and retirement benefits, provided that they are required as a condition of employment.

(D) Deductions for health insurance premiums and state disability insurance premiums.

(E) Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is not a subject of the award to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by the county support guidelines applicable in the county of the child's residence, for a natural or adopted child or children of the parent not residing in that parent's home, who is not the subject of the award to be established by the court, and for whom the parent has a duty of support.

(4) For the purposes of verifying total gross income and amounts allowed for deductions, copies of the parents' federal and state income tax returns for the previous two years, copies of present wage stubs, and any other relevant documents shall be subject to discovery by the parties. Further, the court may require copies of the parents' federal and state tax returns for the previous two years, copies of present wage stubs, and such other documentation as it may deem necessary, including a current income and expense declaration in the form prescribed by the Judicial Council for family law matters.

(5) For the purpose of determining the parent's annual gross income, in calculating the mandatory minimum child support award, the court shall not include any portion of the earned income and income derived from the separate property of the current spouse or the nonmarital partner of either parent. This requirement does not apply to a child support obligation arising from the marriage between the obligated parents.

(6) The court shall inquire of each party as to the total number of minor children he or she is legally obligated to support.

(b) This section shall remain in effect only until the operative date of the rules of court incorporating the guidelines specified in Section 4720.1, and as of that date is repealed, unless a later enacted statute,

which is enacted before that date, deletes or extends that date.

SEC. 14. Section 4721 is added to the Civil Code, to read:

4721. (a) In determining the ability of parents to pay the mandatory minimum child support award and to calculate the actual monthly payments to be made by each parent, all of the following provisions apply:

(1) The annual gross income of each parent shall be determined and then adjusted to obtain the annual net disposable income. To determine and apportion the mandatory minimum child support award, as defined in Section 4722, the court shall also consider, to the extent consistent with the best interests of the child or children, the earning capacity of either or both parents. The annual gross income means income from whatever source derived, except as specified in paragraph (2), and includes, but is not limited to, all of the following:

(A) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, and spousal support actually received from a person not a party to the order.

(B) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(C) To the extent that income derived from subparagraphs (A) and (B) is insufficient to produce a mandatory minimum child support award at the AFDC standard for the same number of children, upon the request of either party, the court may consider investment assets of either or both parties which could be liquidated. To determine and apportion the mandatory minimum child support award at the AFDC level, the court shall also consider, to the extent consistent with the best interests of all of the children, the earning capacity of either or both parents.

(2) Annual gross income shall not include any income derived from child support payments actually received and income derived from any public assistance program, eligibility for which is based on a determination of need.

(3) The annual net disposable income of each parent shall be computed by deducting from his or her annual gross income the actual amounts attributable only to the following items, after which the remainder shall be adjusted to reflect the monthly net disposable income of each parent:

(A) The state and federal income taxes attributed to the parent. Federal and state income tax deductions shall bear an accurate relationship to the tax status of the parties (that is, single, married, married filing separately, or head of household) and number of dependents.

(B) Deductions attributed to the employee's contribution or the self-employed worker's contribution pursuant to the Federal Insurance Contributions Act (FICA), or an amount not to exceed that allowed under FICA for persons not subject to FICA, provided

that the deducted amount is used to secure retirement or disability benefits for the parent.

(C) Deductions for mandatory union dues and retirement benefits, provided that they are required as a condition of employment.

(D) Deductions for health insurance premiums and state disability insurance premiums.

(E) Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is not a subject of the award to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by the county support guidelines applicable in the county of the child's residence, for a natural or adopted child or children of the parent not residing in that parent's home, who is not the subject of the award to be established by the court, and for whom the parent has a duty of support.

(4) For the purposes of verifying total gross income and amounts allowed for deductions, copies of the parents' federal and state income tax returns for the previous two years, copies of present wage stubs, and any other relevant documents shall be subject to discovery by the parties. Further, the court may require copies of the parents' federal and state tax returns for the previous two years, copies of present wage stubs, and such other documentation as it may deem necessary, including a current income and expense declaration in the form prescribed by the Judicial Council for family law matters.

(5) For the purpose of determining the parent's annual gross income, in calculating the mandatory minimum child support award, the court shall not include any portion of the earned income and income derived from the separate property of the current spouse or the nonmarital partner of either parent. This requirement does not apply to a child support obligation arising from the marriage between the obligated parents.

(6) The court shall inquire of each party as to the total number of minor children he or she is legally obligated to support.

(b) This section shall become operative on January 1, 1993.

SEC. 15. Section 4722 of the Civil Code is amended to read:

4722. (a) The standard established pursuant to Section 11452 of the Welfare and Institutions Code, as adjusted by Section 11453 of the Welfare and Institutions Code, establishes a minimum family support level based on the number of eligible needy persons in the family.

(b) Each parent's ability to pay a minimum mandatory amount of child support, whether for a temporary or a permanent order, shall be determined in accord with the standards established by Section 11452 of the Welfare and Institutions Code, and prior to the computation of the spousal support liability, as follows:

(1) The combined monthly net disposable income of both parents shall be multiplied by the following percentage factors: 18 percent for one child; 27 percent for two children; 36 percent for three children; 40 percent for four children; and an additional four percent

for each child thereafter, up to a total of 10 children.

(2) If the resulting amount is less than the AFDC standard for the number of children involved, the court shall find that the parents are unable to pay at the level of the children's portion of the AFDC standard and shall set a minimum award according to the actual combined net income and the percentages set forth above.

(3) If the resulting amount is at, or greater than, the AFDC standard for the same number of children, the court shall order a minimum award that equals the AFDC standard.

(c) The AFDC standard for the number of children to be supported shall be the minimum basic standard of adequate care specified in Section 11452 of the Welfare and Institutions Code, as in effect July 21, 1983, annually adjusted pursuant to Section 11453 of the Welfare and Institutions Code, for the number of children to be supported.

(d) The amount each parent shall contribute to the mandatory minimum award shall be determined by multiplying the minimum award by the proportionate share of each parent's contribution to their combined net disposable income.

(e) If more than 10 minor children are to be supported, the minimum award shall be the same as for 10 children.

(f) The award set pursuant to this chapter is the mandatory minimum child support award.

(g) The formula established by this section is represented algebraically as follows:

WHERE:

MB = Minimum base

P = percent = $\frac{NCN}{NCN+CN}$

NCN = noncustodial spouse net income

CN = custodial spouse net income

F = factor (.18 for one child, .27 for two, .36 for three, and .04 for each additional child over three children)

S = the AFDC needs standard for the appropriate number of children to be supported by this order

Y = yield

Then calculation of the minimum support is as follows:

Step 1: F x (CN+NCN) = Y

Step 2: If $Y \geq S$, MB = S

If $Y < S$, MB = Y

Step 3: MB x P = portion of award to be paid by noncustodial spouse.

(h) The formula delineated in this section shall be used only for calculations made under this section for the establishment of a minimum level of child support. Nothing in this section shall be construed to affect the duty or ability of any public agency pursuant to any other provision of law to secure or bring suit for

reimbursement of AFDC public assistance paid to a family unit, eligible therefor under the applicable provisions of law, in an amount not to exceed the total amount of aid actually paid.

(i) This section shall remain in effect only until the operative date of the rules of court incorporating the guidelines specified in Section 4720.1, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 16. Section 4722 is added to the Civil Code, to read:

4722. (a) The standard established pursuant to Section 11452 of the Welfare and Institutions Code, as adjusted by Section 11453 of the Welfare and Institutions Code, establishes a minimum family support level based on the number of eligible needy persons in the family.

(b) Each parent's ability to pay a minimum mandatory amount of child support, whether for a temporary or a permanent order, shall be determined in accord with the standards established by Section 11452 of the Welfare and Institutions Code, and prior to the computation of the spousal support liability, as follows:

(1) The combined monthly net disposable income of both parents shall be multiplied by the following percentage factors: 18 percent for one child; 27 percent for two children; 36 percent for three children; 40 percent for four children; and an additional four percent for each child thereafter, up to a total of 10 children.

(2) If the resulting amount is less than the AFDC standard for the number of children involved, the court shall find that the parents are unable to pay at the level of the children's portion of the AFDC standard and shall set a minimum award according to the actual combined net income and the percentages set forth above.

(3) If the resulting amount is at, or greater than, the AFDC standard for the same number of children, the court shall order a minimum award that equals the AFDC standard.

(c) The AFDC standard for the number of children to be supported shall be the minimum basic standard of adequate care specified in Section 11452 of the Welfare and Institutions Code, as in effect July 21, 1983, annually adjusted pursuant to Section 11453 of the Welfare and Institutions Code, for the number of children to be supported.

(d) The amount each parent shall contribute to the mandatory minimum award shall be determined by multiplying the minimum award by the proportionate share of each parent's contribution to their combined net disposable income.

(e) If more than 10 minor children are to be supported, the minimum award shall be the same as for 10 children.

(f) The award set pursuant to this chapter is the mandatory minimum child support award.

(g) The formula established by this section is represented algebraically as follows:

WHERE:

MB = Minimum base

P = percent = $\frac{NCN}{NCN+CN}$

NCN = noncustodial spouse net income

CN = custodial spouse net income

F = factor (.18 for one child, .27 for two, .36 for three, and .04 for each additional child over three children)

S = the AFDC needs standard for the appropriate number of children to be supported by this order

Y = yield

Then calculation of the minimum support is as follows:

Step 1: F x (CN+NCN) = Y

Step 2: If $Y \geq S$, MB = S

If $Y < S$, MB = Y

Step 3: MB x P = portion of award to be paid by noncustodial spouse.

(h) The formula delineated in this section shall be used only for calculations made under this section for the establishment of a minimum level of child support. Nothing in this section shall be construed to affect the duty or ability of any public agency pursuant to any other provision of law to secure or bring suit for reimbursement of AFDC public assistance paid to a family unit, eligible therefor under the applicable provisions of law, in an amount not to exceed the total amount of aid actually paid.

(i) This section shall become operative on January 1, 1993.

SEC. 17. Section 4723 of the Civil Code is amended to read:

4723. (a) The mandatory minimum child support award established pursuant to this chapter is intended to assure adequate basic living expenses, including food, shelter, and clothing, for the supported children. The court shall not assume that any other costs related to the rearing of children are provided within the mandatory minimum award. Child care expenses, special educational expenses, expenses for special medical, dental, or mental health needs, and expenses related to any other special needs of the children are not provided for in the mandatory minimum child support award. These expenses shall be considered by the court in making an award in addition to the child support obligation determined pursuant to Section 4722 or pursuant to the discretionary guidelines in use in the county if those guidelines meet the criteria specified in subdivision (a) of Section 4724. These additional awards may be made in separate orders by the court.

(b) This section shall remain in effect only until the operative date of the rules of court incorporating the guidelines specified in Section 4720.1, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 18. Section 4723 is added to the Civil Code, to read:

4723. (a) The mandatory minimum child support award established pursuant to this chapter is intended to assure adequate basic living expenses, including food, shelter, and clothing, for the supported children. The court shall not assume that any other costs related to the rearing of children are provided within the mandatory minimum award. Child care expenses, special educational expenses, expenses for special medical, dental, or mental health needs, and expenses related to any other special needs of the children are not provided for in the mandatory minimum child support award. These expenses shall be considered by the court in making an award in addition to the child support obligation determined pursuant to Section 4722 or pursuant to the discretionary guidelines in use in the county if those guidelines meet the criteria specified in subdivision (a) of Section 4724. These additional awards may be made in separate orders by the court.

(b) This section shall become operative on January 1, 1993.

SEC. 19. Section 4724 of the Civil Code is amended to read:

4724. Upon the request of either party, the court may award and, when appropriate, is hereby urged to award a higher amount of child support than the mandatory minimum child support award.

(a) In setting a higher level of child support, the court shall be guided by the criteria set forth in applicable statutes, relevant case law, state and local child support guidelines not in conflict with the mandatory minimum award established by this chapter, and the legislative intent that children share in their parents' standard of living as set forth in this chapter.

(b) The Judicial Council shall, in accord with the legislative intent set forth in subdivision (e) of Section 4720, develop schedules for discretionary child support awards above the mandatory minimum child support awards as determined pursuant to this chapter for use by those counties without child support schedules. The Judicial Council shall provide these schedules to the counties by July 1, 1986.

(c) The courts shall review the guidelines in use in their counties prior to the implementation of this chapter to assure they do not authorize awards less than the mandatory minimum award.

(d) In setting a level of child support below the applicable level in the discretionary guideline in use in a county the court shall state its reasons on the record, citing the documentation of any underlying facts and circumstances for the award.

(e) This section shall remain in effect only until the operative date of the rules of court incorporating the guidelines specified in Section 4720.1, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 20. Section 4724 is added to the Civil Code, to read:

4724. Upon the request of either party, the court may award and, when appropriate, is hereby urged to award a higher amount of child support than the mandatory minimum child support award.

(a) In setting a higher level of child support, the court shall be guided by the criteria set forth in applicable statutes, relevant case

law, state and local child support guidelines not in conflict with the mandatory minimum award established by this chapter, and the legislative intent that children share in their parents' standard of living as set forth in this chapter.

(b) The Judicial Council shall, in accord with the legislative intent set forth in subdivision (e) of Section 4720, develop schedules for discretionary child support awards above the mandatory minimum child support awards as determined pursuant to this chapter for use by those counties without child support schedules. The Judicial Council shall provide these schedules to the counties by July 1, 1986.

(c) The courts shall review the guidelines in use in their counties prior to the implementation of this chapter to assure they do not authorize awards less than the mandatory minimum award.

(d) In setting a level of child support below the applicable level in the discretionary guideline in use in a county the court shall state its reasons on the record, citing the documentation of any underlying facts and circumstances for the award.

(e) This section shall become operative on January 1, 1993.

SEC. 21. Section 4725 of the Civil Code is amended to read:

4725. In the event that a parent is experiencing extreme financial hardship due to justifiable expenses resulting from the circumstances enumerated in this section, upon the request of a party, the court may allow such income deductions as may be necessary to accommodate those circumstances, in addition to the deductions specified in subdivision (c) of Section 4721.

(a) Circumstances evidencing hardship include the extraordinary health expenses for which the parent is financially responsible, and uninsured catastrophic losses.

(b) Circumstances evidencing hardship also include the minimum basic living expenses of either parent's natural or adopted children for whom the parent has the obligation to support from other marriages or relationships who reside with the parent. The court, upon its own motion or upon the request of a party, may allow such income deductions as are necessary to accommodate these expenses after making the deductions allowable under subdivision (a) of this section. Unless there are exceptional circumstances as provided under subdivision (e) of Section 4720 or as otherwise provided in this subdivision, when the court makes a child support award in accordance with the mandatory minimum amount of child support provided under this act, the maximum hardship deduction for each child who resides with the parent may equal, but shall not exceed, the support awarded each child subject to the order and shall be calculated as follows:

N_o = Obligated parent's net income prior to the deduction for hardship.
F = The factor as defined in subdivision (g) of Section 4722 as applied to the child or children for whom support is being awarded.
H_c = Number of children for whom a hardship deduction is being given.
S_c = Number of children for whom support is being awarded.
D = Maximum deduction per child.

$$D = \frac{(F)\ (N_o)}{S_c + (F)\ (H_c)}$$

The Judicial Council shall develop tables in accordance with the above formula to reflect the maximum hardship deduction taking into consideration the obligated parent's net income before the hardship deduction, the number of children for whom the hardship deduction is being given, and the number of children for whom the support award is being made. The Judicial Council shall provide these tables to the counties by January 1, 1989.

Counties may, but are not required to, adopt a formula for use by the court in establishing the maximum hardship deduction for each child who resides with the parent and which provides a deduction that may equal, but shall not exceed, the support awarded each child subject to the order when the court makes a child support award in accordance with local support guidelines.

(c) If deductions for hardship expenses are allowed, the court shall state on the record the reasons supporting the deductions, cite the documentation of the underlying facts and circumstances, and specify the amount of deductions allowed. Whenever possible, the court shall specify the duration that any deduction shall be in effect.

(d) Upon considering whether to allow a deduction under this section, and in determining the amount of any such deduction, the court shall be guided by the goals set forth in the expression of legislative intent set forth in this chapter.

(e) The court shall not order a child support award that would reduce a parent's net income to an amount less than that established for the needs of one person by Section 11452 of the Welfare and Institutions Code, as annually adjusted by Section 11453 of that code.

(f) This section shall remain in effect only until the operative date of the rules of court incorporating the guidelines specified in Section 4720.1, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 22. Section 4725 is added to the Civil Code, to read:

4725. In the event that a parent is experiencing extreme financial hardship due to justifiable expenses resulting from the circumstances enumerated in this section, upon the request of a party, the court may allow such income deductions as may be necessary to accommodate those circumstances, in addition to the deductions

specified in subdivision (c) of Section 4721.

(a) Circumstances evidencing hardship include the extraordinary health expenses for which the parent is financially responsible, and uninsured catastrophic losses.

(b) Circumstances evidencing hardship also include the minimum basic living expenses of either parent's natural or adopted children for whom the parent has the obligation to support from other marriages or relationships who reside with the parent. The court, upon its own motion or upon the request of a party, may allow such income deductions as are necessary to accommodate these expenses after making the deductions allowable under subdivision (a) of this section. Unless there are exceptional circumstances as provided under subdivision (e) of Section 4720 or as otherwise provided in this subdivision, when the court makes a child support award in accordance with the mandatory minimum amount of child support provided under this act, the maximum hardship deduction for each child who resides with the parent may equal, but shall not exceed, the support awarded each child subject to the order and shall be calculated as follows:

N_o = Obligated parent's net income prior to the deduction for hardship.

F = The factor as defined in subdivision (g) of Section 4722 as applied to the child or children for whom support is being awarded.

H_c = Number of children for whom a hardship deduction is being given.

S_c = Number of children for whom support is being awarded.

D = Maximum deduction per child.

$$D = \frac{(F)\ (N_o)}{S_c + (F)\ (H_c)}$$

The Judicial Council shall develop tables in accordance with the above formula to reflect the maximum hardship deduction taking into consideration the obligated parent's net income before the hardship deduction, the number of children for whom the hardship deduction is being given, and the number of children for whom the support award is being made. The Judicial Council shall provide these tables to the counties by January 1, 1989.

Counties may, but are not required to, adopt a formula for use by the court in establishing the maximum hardship deduction for each child who resides with the parent and which provides a deduction that may equal, but shall not exceed, the support awarded each child subject to the order when the court makes a child support award in accordance with local support guidelines.

(c) If deductions for hardship expenses are allowed, the court shall state on the record the reasons supporting the deductions, cite the documentation of the underlying facts and circumstances, and

specify the amount of deductions allowed. Whenever possible, the court shall specify the duration that any deduction shall be in effect.

(d) Upon considering whether to allow a deduction under this section, and in determining the amount of any such deduction, the court shall be guided by the goals set forth in the expression of legislative intent set forth in this chapter.

(e) The court shall not order a child support award that would reduce a parent's net income to an amount less than that established for the needs of one person by Section 11452 of the Welfare and Institutions Code, as annually adjusted by Section 11453 of that code.

(f) This section shall become operative on January 1, 1993.

SEC. 23. Section 4727 of the Civil Code is amended to read:

4727. (a) Except when a child or children are receiving an AFDC grant, upon request, the court may take into consideration expenses incurred and savings resulting from shared physical custody arrangements in determining the pro rata share of the mandatory minimum child support award to be allocated to each parent. For the purpose of this chapter, "shared physical custody" means an arrangement in which the parents share physical custody so that both have custody of the child or children more than 30 percent of a 365-day period.

(b) This section shall remain in effect only until the operative date of the rules of court incorporating the guidelines specified in Section 4720.1, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 23.5. Section 4727 is added to the Civil Code, to read:

4727. (a) Except when a child or children are receiving an AFDC grant, upon request, the court may take into consideration expenses incurred and savings resulting from shared physical custody arrangements in determining the pro rata share of the mandatory minimum child support award to be allocated to each parent. For the purpose of this chapter, "shared physical custody" means an arrangement in which the parents share physical custody so that both have custody of the child or children more than 30 percent of a 365-day period.

(b) This section shall become operative on January 1, 1993.

SEC. 24. Section 4728 of the Civil Code is amended to read:

4728. (a) This act shall not be construed to impair the right of parties to enter stipulated agreements, except that the court shall not approve a stipulated agreement for a child support award unless all of the following conditions are met:

(1) The parties acknowledge that they are fully informed of their rights pursuant to this chapter and that the award is being agreed to without coercion or duress.

(2) The parties declare that their children's needs will be adequately met.

(3) The right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code, and no public assistance application is pending.

(b) If the parties to a stipulated agreement stipulate to a child support award below the mandatory minimum level, no change of circumstance need be demonstrated to obtain a modification of the child support award to the applicable mandatory minimum level or above.

(c) This section shall remain in effect only until the operative date of the rules of court incorporating the guidelines specified in Section 4720.1, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 25. Section 4728 is added to the Civil Code, to read:

4728. (a) This act shall not be construed to impair the right of parties to enter stipulated agreements, except that the court shall not approve a stipulated agreement for a child support award unless all of the following conditions are met:

(1) The parties acknowledge that they are fully informed of their rights pursuant this chapter and that the award is being agreed to without coercion or duress.

(2) The parties declare that their children's needs will be adequately met.

(3) The right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code, and no public assistance application is pending.

(b) If the parties to a stipulated agreement stipulate to a child support award below the mandatory minimum level, no change of circumstance need be demonstrated to obtain a modification of the child support award to the applicable mandatory minimum level or above.

(c) This section shall become operative on January 1, 1993.

SEC. 26. Section 4728.5 of the Civil Code is amended to read:

4728.5. (a) In ordering payment of the temporary or permanent awards determined under this chapter, the court may consider as payment a portion of the rental value of the family residence in which the children for the support of whom the award was made are allowed to reside, to the extent that it exceeds the mortgage payments, homeowner's insurance, and property taxes.

(b) This section shall remain in effect only until the operative date of the rules of court incorporating the guidelines specified in Section 4720.1, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 27. Section 4728.5 is added to the Civil Code, to read:

4728.5. (a) In ordering payment of the temporary or permanent awards determined under this chapter, the court may consider as payment a portion of the rental value of the family residence in which the children for the support of whom the award was made are allowed to reside, to the extent that it exceeds the mortgage payments, homeowner's insurance, and property taxes.

(b) This section shall become operative on January 1, 1993.

SEC. 28. Section 5165 of the Civil Code is amended to read:

5165. The clerk of each superior court shall maintain a registry in

which he or she shall enter all of the following:

(a) Certified copies of custody decrees of other states received for filing.

(b) Communications as to the pendency of custody proceedings in other states.

(c) Communications concerning a finding of inconvenient forum by a court of another state.

(d) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

(e) Any custody agreement for which an order is requested regarding a child or children who are not the subject of another order. The parties shall submit the affidavit required by Section 5158, on the form developed by the Judicial Council for use with Section 5158.

SEC. 29. Section 7010 of the Civil Code is amended to read:

7010. (a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes except for actions brought pursuant to Section 270 of the Penal Code.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued as prescribed in Article 6 (commencing with Section 10450) of Chapter 8 of Division 9 of the Health and Safety Code.

(c) (1) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(2) The judgment or order may, in appropriate circumstances, based on all relevant facts, require one parent to pay to the other parent a reasonable amount for the cost of the support of the child for the shortest of the following periods prior to the filing of the action:

(A) Three years.

(B) The date of the mailing of the birth certificate or the mailing of the written notification by the custodial parent, pursuant to paragraph (3).

(C) The date of separation of the parties until the date of the filing of the action.

This paragraph shall only apply to a child born on or after January 1, 1989.

(3) In circumstances where paternity has not been legally established or the parties were married but separated before the

child's date of birth, the court shall not award child support under paragraph (2), under any circumstances, unless the father has received a copy of the birth certificate as provided in Section 10061 of the Health and Safety Code, or the custodial parent has provided written notification by first-class mail, with return receipt requested, to the father of his paternity and of his obligation to support the child. In determining whether the judgment or order may be awarded, the court shall consider the diligence on the part of the custodial parent in bringing the action for support. Any support ordered pursuant to paragraph (2) shall not be in an amount that reduces a parent's ability to provide appropriate support for any other child for whom a duty of support is owed if the support is actually being paid. The court shall review the incomes and expenses of the parents each year, or other relevant period of time, for which support is being requested and may apply its guidelines and the child support laws in effect for each period. This paragraph shall only apply to a child born on or after January 1, 1989.

(d) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including, but not limited to, all of the following:

(1) Any agreements made between the parents before the date of the filing of the action.

(2) Any previous payments made for the support of the child by the parent from whom support is sought.

(3) Any bad faith on the part of either parent.

(4) Any undue delay in seeking to establish an order for child support; the reasons for the undue delay; and whether either parent has been prejudiced as a result of the delay.

(5) Any other factors deemed relevant by the court.

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 30. Section 7010 is added to the Civil Code, to read:

7010. (a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes except for actions brought pursuant to Section 270 of the Penal Code.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued as prescribed in Article 6 (commencing with Section 10450) of Chapter 8, of Division 9 of the Health and Safety Code.

(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the

father to pay the reasonable expenses of the mother's pregnancy and confinement.

(d) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts.

(e) This section shall become operative January 1, 1993.

SEC. 30.5. Section 706.011 of the Code of Civil Procedure is amended to read:

706.011. As used in this chapter:

(a) "Earnings" means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise.

(b) "Employee" means a public officer and any individual who performs services subject to the right of the employer to control both what shall be done and how it shall be done.

(c) "Employer" means a person for whom an individual performs services as an employee.

(d) "Judgment creditor," as applied to the state, means the specific state agency seeking to collect a judgment or tax liability.

(e) "Judgment debtor" includes a person from whom the state is seeking to collect a tax liability under Article 4 (commencing with Section 706.070), whether or not a judgment has been obtained on such tax liability.

(f) "Person" includes an individual, a corporation, a partnership or other unincorporated association, and a public entity.

(g) "Wage assignment for support" means an order, made pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code or Section 3088 of the Probate Code, which requires an employer to withhold earnings for support.

SEC. 31. Section 708.780 of the Code of Civil Procedure is amended to read:

708.780. (a) Filing of the abstract or certified copy of the judgment and the affidavit pursuant to this article creates a lien on the money owing and unpaid to the judgment debtor by the public entity in an amount equal to that which may properly be applied to the satisfaction of the money judgment under this article.

(b) When an affidavit is filed pursuant to subdivision (c) of Section 708.730, it shall apply to all claims for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, which the judgment debtor subsequently claims during a period one year after filing of the affidavit, or October 1 of the year following the filing of the affidavit, whichever occurs later, the same as if claims for these overpayments were filed by the judgment debtor with the appropriate state agency on the date the

affidavit was filed.

(c) When a request is filed pursuant to subdivision (d) of Section 708.730 with the court, the clerk of the court shall issue a Notice of Support Arrearage. The clerk of the court shall issue the notice 30 days after the request was filed pursuant to subdivision (d) of Section 708.730 without a hearing if no objection has been raised by the judgment debtor pursuant to this subdivision. If an objection has been raised, the notice shall not be ordered until after a hearing. The notice shall contain the name of the person ordered to pay support and his or her social security number; the amount of the arrearage determined by the court; whether the arrearage is for child, spousal, or family support and the specific combination thereof; a statement of how the recipient may challenge the statement of arrearage; and the name, address, and social security number of the person to whom the arrearage is owed. Upon the clerk of the court issuing the Notice of Support Arrearage, a copy of the request, the affidavit, and the notice shall be served by the party who requested the court to issue the Notice of Support Arrearage upon the person ordered to pay support and the Controller. Service may be personal, in accordance with Section 1011, or by mail, in accordance with Section 1013. Service upon the Controller shall be at the Controller's office in Sacramento.

The judgment debtor may object to the request or affidavit upon any of the following grounds: (1) there is an error in the amount of the arrearage stated in the affidavit; (2) the alleged judgment debtor is not the judgment debtor from whom the support is due; (3) the amount to be intercepted exceeds that allowable under federal law; (4) a default in payment of the support for 30 days has not occurred; or (5) other necessary factual allegations contained in the affidavit are erroneous.

Upon receipt of the Notice of Support Arrearage, the Controller shall take reasonable measures to deduct from any personal income tax refunds and lottery winnings owed and processed for payment to the judgment debtor and deposit with the court a warrant, subject to Sections 708.770 and 708.775, with service of a copy of the warrant upon the district attorney of the county in which the support judgment is entered, payable to the court, the amount due the judgment creditor (after deducting an amount sufficient to reimburse the state for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent, and pay the balance thereof, if any, to the judgment debtor. At any hearing pursuant to Section 708.770, the judgment debtor may challenge the distribution of these funds on exemption or other grounds, including, but not limited to, an allegation that the judgment has been satisfied or that service was improper. The notice shall not apply to any money which is exempt by law from execution. The Controller shall determine the cost of enforcing the notice and may establish a notice filing fee not to exceed five dollars ($5).

Service of the Notice of Support Arrearage and of the request and affidavit pursuant to this subdivision creates a lien on the money owing and unpaid to the judgment debtor which shall become effective 30 days following service upon the Controller. This notice shall remain in effect for four years from the date of its issuance or until the arrearage for which the notice was issued is satisfied, whichever occurs first.

Any person who files a request with the court to issue a Notice of Support Arrearage pursuant to subdivision (d) of Section 708.730 shall notify the court and the Controller of any satisfaction of the arrearage after the Notice of Support Arrearage has been issued by the clerk of the court. The notice to the court and the Controller shall be filed with the court and the Controller and served upon the district attorney of the county in which the support judgment is entered within 30 days of the satisfaction or discharge and shall show a partial or full satisfaction of the arrearage or any other resolution of the arrearage.

Upon filing and service, the Notice of Support Arrearage shall be of no force and effect.

This subdivision shall be operative only until January 1, 1994.

(d) For purposes of this section, "support" means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

SEC. 32. Section 68514 is added to the Government Code, to read:

68514. (a) The Judicial Council shall include as part of the Council's Annual Report of the Administrative Office of the California Courts the total number of Order to Show Cause and Notices of Motions filed seeking retroactive child support pursuant to Sections 196, 4700, and 7010 of the Civil Code, and the total number of orders granting retroactive support pursuant to these sections.

(b) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 33. Section 10061 of the Health and Safety Code is amended to read:

10061. (a) The local registrar of births and deaths shall transmit each week to the State Registrar all original certificates accepted for registration by him or her during the preceding week.

(b) The local registrar shall only mail a certified copy of a public portion of the certificate to the father identified in the certificate upon the written or in-person request of the mother. A mother requesting such a mailing shall provide the local registrar with the mailing address of the father and shall be charged the statutory fee for a certified copy plus an administrative handling fee of three dollars ($3) and the actual cost for the mailing by first-class, restricted delivery, return receipt requested, mail.

(c) The local registrar shall provide to the State Registrar the number of mailings requested under subdivision (b). The State Registrar shall make this information available to the Legislature.

(d) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 34. Section 10061 is added to the Health and Safety Code, to read:

10061. (a) The local registrar of births and deaths shall transmit each week to the State Registrar all original certificates accepted for registration by him or her during the preceding week.

(b) This section shall become operative on January 1, 1993.

SEC. 35. Section 10125.5 of the Health and Safety Code is amended to read:

10125.5. (a) The second section of the certificate of live birth as specified in subdivision (b) of Section 10125 shall be confidential. Access to such portion of any certificate of live birth shall be limited to the following:

(1) State Department of Health Services staff.

(2) Local registrar's staff and local health department staff when approved by the local registrar or local health officer, respectively.

(3) Persons with a valid scientific interest as determined by the State Registrar, who are engaged in demographic, epidemiological or other similar studies related to health, and who agree to maintain confidentiality as prescribed by this division and by regulation of the State Registrar.

(4) The parent who signed the certificate or, if no parent signed the certificate, the mother.

(5) The person named on the certificate.

(6) Any person who has petitioned to adopt the person named on the certificate, subject to Section 10439 of the Health and Safety Code and Section 227 of the Civil Code.

(b) The State Department of Health Services shall maintain an accurate record of all persons who are given access to the confidential portion of the certificate. The record shall include: the name of the person authorizing access; name, title, and organizational affiliation of persons given access; dates of access; and specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the State Department of Health Services.

(c) All research proposed to be conducted using the confidential medical and social information on the birth certificate shall first be reviewed by the appropriate committee constituted for the protection of human subjects which is approved by the federal Department of Health and Human Services and has a general assurance pursuant to Part 46 of Title 45 of the Code of Federal Regulations. No information shall be released until the request for information has been reviewed by the Vital Statistics Advisory Committee and the committee has recommended to the State Registrar that such information shall be released.

SEC. 35.5. Section 10125.5 of the Health and Safety Code is amended to read:

10125.5. (a) The second section of the certificate of live birth as specified in subdivision (b) of Section 10125 shall be confidential. Access to such portion of any certificate of live birth shall be limited to the following:

(1) State Department of Health Services staff.

(2) Local registrar's staff and local health department staff when approved by the local registrar or local health officer, respectively.

(3) Persons with a valid scientific interest as determined by the State Registrar, who are engaged in demographic, epidemiological or other similar studies related to health, and who agree to maintain confidentiality as prescribed by this division and by regulation of the State Registrar.

(4) The parent who signed the certificate or, if no parent signed the certificate, the mother.

(5) The person named on the certificate.

(6) Any person who has petitioned to adopt the person named on the certificate, subject to Section 10439 of the Health and Safety Code and Sections 229.10 and 229.40 of the Civil Code.

(b) The State Department of Health Services shall maintain an accurate record of all persons who are given access to the confidential portion of the certificate. The record shall include: the name of the person authorizing access; name, title, and organizational affiliation of persons given access; dates of access; and specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the State Department of Health Services.

(c) All research proposed to be conducted using the confidential medical and social information on the birth certificate shall first be reviewed by the appropriate committee constituted for the protection of human subjects which is approved by the federal Department of Health and Human Services and has a general assurance pursuant to Part 46 of Title 45 of the Code of Federal Regulations. No information shall be released until the request for information has been reviewed by the Vital Statistics Advisory Committee and the committee has recommended to the State Registrar that the information shall be released.

SEC. 36 Section 10125.6 of the Health and Safety Code is amended to read:

10125.6. (a) The State Department of Health Services and the State Department of Social Services shall cooperatively develop an informational notice which advises the mother of a newborn child of her right to retroactive child support as provided by Sections 196, 4700, and 7010 of the Civil Code. The notice shall also advise the mother of her right to have a certified copy of the public portion of the certificate of birth mailed to the father pursuant to subdivision (b) of Section 10061.

(b) The State Department of Health Services and the State Department of Social Services shall distribute copies of the notice formulated pursuant to subdivision (a) to each health facility that

provides maternity services. Each such health facility shall provide a copy of the notice to each pregnant woman admitted for delivery of a child.

(c) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 37. Section 11489 of the Welfare and Institutions Code is amended to read:

11489. After judgment in any court action brought to enforce the support obligation of an absent parent pursuant to the provisions of this chapter, the court may order an assignment of earnings pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code.

SEC. 38. Section 6.5 of this bill incorporates amendments to Section 4700 of the Civil Code proposed by both this bill and SB 215. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Sections 4700 of the Civil Code, and (3) this bill is enacted after SB 215, in which case Section 6 of this bill shall not become operative.

SEC. 39. Section 35.5 of this bill incorporates amendments to Section 10125.5 of the Health and Safety Code proposed by both this bill and AB 3532. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, but this bill becomes operative first, (2) each bill amends Section 10125.5 of the Health and Safety Code, and (3) this bill is enacted after AB 3532, in which case Section 10125.5 of the Health and Safety Code, as amended by Section 35 of this bill, shall remain operative only until the operative date of AB 3532, at which time Section 35.5 of this bill shall become operative.

SEC. 40. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1494

An act to amend Sections 63.1, 69.5, and 75.55 of, and to add Section 74.3 to, the Revenue and Taxation Code, relating to property taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 63.1 of the Revenue and Taxation Code is amended to read:

63.1. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include either of the following purchases or transfers for which a claim is filed pursuant to this section:

(1) The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children.

(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

(b) (1) For purposes of paragraph (1) of subdivision (a), "principal residence" means a dwelling for which a homeowner's exemption or a disabled veteran's residence exemption has been granted in the name of the eligible transferor. "Principal residence" includes only that portion of the land underlying the principal residence which consists of an area of reasonable size which is used as a site for the residence.

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor. The exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either subdivision (f) of Section 62 or subdivision (b) of Section 65, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar ($1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real

property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

(1) "Purchase or transfer between parents and their children" means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children.

(2) "Children" means any of the following:

(A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(3) "Full cash value" means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(4) "Eligible transferor" means a parent or child of an eligible transferee.

(5) "Eligible transferee" means a parent or child of an eligible transferor.

(6) "Real property" means real property as defined in Section 104. Real property does not include any interest in a legal entity.

(7) "Transfer" includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(d) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(1) A written certification by the transferee made under penalty

of perjury that the transferee is a parent or child of the transferor.

(2) A copy of a written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate made under penalty of perjury that the transferor is a parent or child of the transferee. The written certification shall also include either or both of the following:

(A) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(B) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor which is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, and the names of the eligible transferees of that property.

(C) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee of the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (e) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.

The State Board of Equalization shall design the form for claiming eligibility. Any claim under this section shall be filed within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to this subdivision. Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the tax identification number of each eligible transferor, and any other information as the board shall require in order to monitor the one million dollar ($1,000,000) limitation in paragraph (2) of subdivision (a).

(e) This section shall apply to both voluntary transfers and

transfers resulting from a court order or judicial decree.

(f) This section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, which occurred prior to that date.

SEC. 1.5. Section 63.1 of the Revenue and Taxation Code is amended to read:

63.1. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include either of the following purchases or transfers for which a claim is filed pursuant to this section:

(1) The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children.

(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

(b) (1) For purposes of paragraph (1) of subdivision (a), "principal residence" means a dwelling for which a homeowner's exemption or a disabled veteran's residence exemption has been granted in the name of the eligible transferor. "Principal residence" includes only that portion of the land underlying the principal residence which consists of an area of reasonable size which is used as a site for the residence.

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar ($1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor. The exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either subdivision (f) of Section 62 or subdivision (b) of Section 65, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar ($1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

(1) "Purchase or transfer between parents and their children" means either a transfer from a parent or parents to a child or children

of the parent or parents or a transfer from a child or children to a parent or parents of the child or children.

(2) "Children" means any of the following:

(A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(3) "Full cash value" means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(4) "Eligible transferor" means a parent or child of an eligible transferee.

(5) "Eligible transferee" means a parent or child of an eligible transferor.

(6) "Real property" means real property as defined in Section 104. Real property does not include any interest in a legal entity.

(7) "Transfer" includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(d) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(1) A written certification by the transferee made under penalty of perjury that the transferee is a parent or child of the transferor.

(2) A copy of a written certification by the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate made under penalty of perjury that the transferor is a parent or child of the transferee. The written certification shall also include either or both of the following:

(A) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(B) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor which is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the Social Security number of each eligible transferor, and the names of the eligible transferees of that property.

(C) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee of the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (e) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.

The State Board of Equalization shall design the form for claiming eligibility. Any claim under this section shall be filed within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to this subdivision. Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the Social Security number of each eligible transferor, and any other information as the board shall require in order to monitor the one million dollar ($1,000,000) limitation in paragraph (2) of subdivision (a).

(e) This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(f) This section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, which occurred prior to that date.

SEC. 2. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be

available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately

purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them shall be deemed eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5303 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of the claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician or surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move

to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) " Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, " base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the " base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other

shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full

cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the original property or the replacement dwelling, whether or not that spouse joined in the claim, the spouse shall also be deemed a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has or has not been met by the spouse.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Severely and permanently disabled person" means any person described in subdivision (b) of Section 74.3.

(h) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(1) The date the original property is sold.

(2) The date the replacement dwelling is purchased.

(3) The date the new construction of the replacement dwelling is completed.

Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the

basis of the adjusted new base-year value.

Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(i) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(j) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 2.3. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in

which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the

replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land

on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them shall be deemed eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance

with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of the claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on

the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest

described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the original property or the replacement dwelling, whether or not that spouse joined in the claim, the spouse shall also be deemed a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility

specified in paragraph (7) of subdivision (b) has or has not been met by the spouse.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Severely and permanently disabled person" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on

the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(j) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 2.5. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of the Chapter 481 of the Statutes or 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to

situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building,

structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not

constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property

qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original

property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base-year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse shall also be deemed a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has or has not been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance

described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(14) "Severely and permanently disabled person" means any person described in subdivision (b) of Section 74.3.

(h) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(1) The date the original property is sold.

(2) The date the replacement dwelling is purchased.

(3) The date the new construction of the replacement dwelling is completed.

Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any

portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(k) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 2.7. Section 69.5 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 481 of the Statutes of 1989, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring

that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base-year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base-year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base-year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data-processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the

claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them shall be deemed eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property, and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base-year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as

a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse shall also be deemed a claimant for purposes of determining whether the condition of

paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation.

(13) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(14) "Severely and permanently disabled person" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base-year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base-year value of original properties to replacement dwellings located in different counties, this section, except as provided in paragraph (3), shall apply to any replacement dwelling which is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(k) The amendments to this section made by the act adding this

subdivision, and the amendments to this section during the 1989 portion of the 1989–90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 3. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the

claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that

portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of the claimant and of any spouse of the claimant who was a record owner of the original

property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year

value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash

value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the original property or the replacement dwelling, whether or not that spouse joined in the claim, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has or has not been met by the spouse.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(h) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(1) The date the original property is sold.

(2) The date the replacement dwelling is purchased.

(3) The date the new construction of the replacement dwelling is completed.

Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(i) (1) This section, except as provided in paragraph (2), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(j) The amendments to this section made by the act adding this subdivision shall become operative on the effective date of this act unless Assembly Constitutional Amendment No. 1 of the 1987–88 Regular Session is approved by the voters. In that event, the amendments shall not become operative until January 1, 1999.

SEC. 3.3. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or

the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the

former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of the claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the

replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the original property or the replacement dwelling, whether or not that spouse joined in the claim, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has or has not been met by the spouse.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust

the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more that the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) (1) This section, except as provided in paragraph (2), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(j) The amendments to this section made by the act adding this subdivision shall become operative on January 1, 1999.

Section 3.5. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and

permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f)

and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly

constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that

the age requirement is met. In the case of a severely and permanently disabled claimant, either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under the penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years

used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the

date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(12) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(h) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(1) The date the original property is sold.

(2) The date the replacement dwelling is purchased.

(3) The date the new construction of the replacement dwelling is completed.

Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have

occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) This section, except as provided in paragraph (2), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(k) The amendments to this section made by the act adding this subdivision shall become operative on the effective date of this act unless Assembly Constitutional Amendment No. 1 of the 1987–88 Regular Session is approved by the voters. In that event, the amendments shall not become operative until January 1, 1999.

SEC. 3.7. Section 69.5 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1271 of the Statutes of 1988, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base-year value of that property to any replacement dwelling of equal or lesser value which is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base-year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format which is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be

available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base-year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base-year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base-year value of the mobilehome or the base-year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor of that portion of land which does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base-year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base-year value shall be made by the assessor to that portion of land which does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately

purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base-year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base-year value determined in accordance with this section because the property qualifies as a replacement dwelling.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form which the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty which identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move

to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base-year value of the original property" means its base-year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base-year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base-year value of the original property" shall be deemed to be the base year or years of any property to which that base-year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size

which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, which is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base-year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or

new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has been met.

(10) "Property which is eligible for the homeowner's exemption" includes property which is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(12) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base-year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base-year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base-year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base-year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base-year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on

the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) This section, except as provided in paragraph (2), shall apply to any replacement dwelling which is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base-year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings which are purchased or newly constructed on or after June 6, 1990.

(k) The amendments to this section made by the act adding this subdivision shall become operative on January 1, 1999.

SEC. 4. Section 74.3 is added to the Revenue and Taxation Code, to read:

74.3. (a) For purposes of subdivision (a) of Section 2 of Article XIII A of the California Constitution, "newly constructed" does not include the construction, installation, or modification of any portion or structural component of an existing single- or multiple-family dwelling which is eligible for the homeowner's exemption as described in Section 218, if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely and permanently disabled person who is a permanent resident of the dwelling.

(b) For purposes of this section, "a severely and permanently

disabled person" is any person who has a physical disability or impairment, whether from birth or by reason of accident or disease, which results in a functional limitation as to employment or substantially limits one or more major life activity of that person, and which has been diagnosed as permanently affecting the person's ability to function, including, but not limited to, any disability or impairment which affects sight, speech, hearing, or the use of any limbs.

(c) For purposes of this section, "accessible" means that combination of elements with regard to any dwelling which provides for access to, circulation throughout, and the full use of, the dwelling and any fixture, facility, or item therein.

(d) The exclusion provided by this section shall apply only to those improvements or features that specially adapt a dwelling accessibility by a severely and permanently disabled person. The value of any improvement, addition, or modification excluded pursuant to this section shall not include any other functional improvement, addition, or modification to the property unless it is merely incidental to the qualified improvements or features.

(e) The exclusion provided by this section shall not apply to the construction of an entirely new dwelling.

(f) The construction, installation, or modification, with regard to an existing building, for purposes of making the structure more accessible to a disabled person, shall be eligible for exclusion pursuant to this section only if the disabled person, or his or her spouse or legal guardian, submits to the assessor both of the following:

(1) A statement signed by a licensed physician or surgeon, of appropriate specialty which certifies that the person is severely and permanently disabled as defined in subdivision (b), and identifies specific disability-related requirements necessitating accessibility improvements or features.

(2) A statement that identifies the construction, installation, or modification that was in fact necessary to make the structure more accessible to the disabled person.

(g) The assessor may charge a fee to the disabled person or his or her spouse or legal guardian sufficient to reimburse the assessor for the costs of processing and administering the statement required by subdivision (f).

(f) This section shall apply to construction, installations, or modifications completed on or after June 6, 1990.

SEC. 5. Section 75.55 of the Revenue and Taxation Code is amended to read:

75.55. (a) A county board of supervisors may, by ordinance, provide for the cancellation of any supplemental tax bill in which the amount of taxes to be billed is less than the cost of administration. In no event shall any supplemental tax bill be canceled pursuant to this subdivision if the amount of taxes on that bill exceeds twenty dollars ($20).

(b) Except where a county board of supervisors has adopted an

ordinance pursuant to subdivision (a), a county board of supervisors may, by ordinance, provide for the cancellation by the assessor of any supplemental assessment where that assessment would result in an amount of taxes due which is less than the cost of assessing and collecting those taxes. In no event shall any supplemental assessment be canceled pursuant to this subdivision if the amount of taxes resulting from that supplemental assessment would exceed twenty dollars ($20).

(c) Notwithstanding this section, no taxable real property shall be exempt from property taxes assessed on the lien date, as provided in Section 2192, unless the property is otherwise exempt under this division.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the duties, obligations, or responsibilities imposed on local government by this act were expressly included in a ballot measure approved by the voters in a statewide election, and because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to fund the costs of the program or level of services mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 63.1 of the Revenue and Taxation Code proposed by both this bill and SB 124. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 63.1 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 124, in which case Section 63.1 of the Revenue and Taxation Code, as amended by SB 124, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 8. (a) Sections 2.3 and 3.3 of this bill incorporate amendments to Section 69.5 of the Revenue and Taxation Code proposed by both this bill and AB 2835. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 69.5 of the Revenue and Taxation Code, (3) AB 3723 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2835, in which case Sections 2, 2.5, 2.7, 3, 3.5, and 3.7 of this bill shall not become operative.

(b) Sections 2.5 and 3.5 of this bill incorporate amendments to Section 69.5 of the Revenue and Taxation Code proposed by both this bill and AB 3723. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 69.5 of the Revenue and Taxation Code, (3) AB 2835 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3723 in which case Sections 2, 2.3, 2.7,

3, 3.3, and 3.7 of this bill shall not become operative.

(c) Sections 2.7 and 3.7 of this bill incorporate amendments to Section 69.5 of the Revenue and Taxation Code proposed by this bill, AB 2835, and AB 3723. They shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1991, (2) all three bills amend Section 69.5 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2835 and AB 3723, in which case Sections 2, 2.3, 2.5, 3, 3.3, and 3.5 of this bill shall not become operative.

SEC. 9. The amendments made by Sections 2.3, 2.7, 3.3, and 3.7 of this act to Section 69.5 of the Revenue and Taxation Code with respect to new construction performed upon a replacement dwelling subsequent to the transfer of base-year value to that dwelling shall only apply with respect to a replacement dwelling which is purchased or newly constructed on or after January 1, 1991.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the property tax relief authorized by Proposition 110, which was approved by the voters at the June 5, 1990, primary election, may be implemented as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1495

An act to amend Sections 5070.3, and 5071.7 of, to add Section 5077.8 to, to repeal and add Section 5077.5 of, the Public Resources Code, relating to parks and recreation, and making an appropriation therefor.

[Approved by Governor September 28, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 5070.3 of the Public Resources Code is amended to read:

5070.3. Unless the context otherwise requires, the following definitions shall govern construction of this article:

(a) "Affirmative access area" means an area of already existing disability access improvements along a heritage corridor.

(b) "Committee" means the California Recreational Trails Committee.

(c) "Heritage corridor" means a regional, state, or nationwide alignment of historical, natural, or conservation education significance, with roads, state and other parks, greenways, or parallel recreational trails, intended to have guidebooks, signs, and other

features to enable self-guiding tourism, and environmental conservation education along most of its length and of all or some of the facilities open to the public along its length, with an emphasis on facilities whose physical and interpretive accessibility meet "whole-access" goals.

(d) "Heritage corridors access map" means a 1:500,000 publicly distributed map combining listings and locations of parks, trails, museums, and roadside historical and natural access points, including disability and interpretive access data, along designated heritage corridors.

(e) "Plan" means the California Recreational Trails System Plan.

(f) "System" means the California Recreational Trails System.

(g) "Whole-access" means a general level of trail and human accessibility that includes not only disabled persons but all others making up the "easy-access" majority of the public. This level of accessibility may also benefit from amplified concepts of natural terrain accessibility and cooperation with volunteer and nonprofit accessibility groups.

SEC. 2. Section 5071.7 of the Public Resources Code is amended to read:

5071.7. (a) (1) In planning the system, the director shall consult with and seek the assistance of the Department of Transportation. The Department of Transportation shall plan and design those trail routes that are in need of construction contiguous to state highways and serve both a transportation and a recreational need.

(2) The Department of Transportation shall install or supervise the installation of signs along heritage corridors consistent with the plan element developed pursuant to this section and Section 5073.1; provided, however, that it shall neither install nor supervise the installation of those signs until it determines that it has available to it adequate volunteers or funds, or a combination thereof, to install or supervise the installation of the signs, or until the Legislature appropriates sufficient funds for the installation or supervision of installation, whichever occurs first.

(b) The element of the plan relating to boating trails and other segments of the system which are oriented to waterways shall be prepared and maintained by the Department of Boating and Waterways pursuant to Article 2.6 (commencing with Section 68) of Chapter 2 of Division 1 of the Harbors and Navigation Code. Those segments shall be integrated with the California Protected Waterways Plan developed pursuant to Chapter 1273 of the Statutes of 1968, and shall be planned so as to be consistent with the preservation of rivers of the California Wild and Scenic Rivers System, as provided in Chapter 1.4 (commencing with Section 5093.50) of this division.

(c) Any element of the plan relating to trails and areas for the use of off/highway motor vehicles shall be prepared and maintained by the Division of Off/Highway Motor Vehicle Recreation pursuant to Chapter 1.25 (commencing with Section 5090.01).

(d) In planning the system, the director shall consult with and seek the assistance of the Department of Rehabilitation, representatives of its California Access Network volunteers, and nonprofit disability access groups to assure that adequate provision is made for publicizing the potential use of recreational trails, including heritage corridors by physically disabled persons.

SEC. 3. Section 5073.1 of the Public Resources Code is repealed.

SEC. 4. Section 5077.5 of the Public Resources Code is repealed.

SEC. 5. Section 5077.5 is added to the Public Resources Code, to read:

5077.5. (a) Because of California's unique potential to encourage initial stages of a nationwide heritage network, the following northern California portions of an eventual nationwide heritage network are hereby designated as heritage corridors:

(1) The California Pioneer and Goldrush Heritage Corridor as the western end of the Transcontinental Historic Heritage Corridor, from San Francisco Bay via the North Lincoln Highway, Highway 40, and present Interstate 80 to Sacramento, Truckee, and the Nevada border.

(2) The Tahoe Pacific/Farms & Forests State Heritage Corridor, as the alternate western end of the Transcontinental Scenic Heritage Corridor, to extend from Fort Bragg to the Pacific Crest along Highway 20, Interstate 80, and south along Highway 89 to South Lake Tahoe and the Nevada border.

(3) The North Central California Coast Heritage Corridor from the San Mateo County Line to Patrick's Point State Park in Humboldt County.

(b) In order to assist establishment and public involvement with the heritage corridors established in subdivision (a), the director and affected state agencies shall work with nonprofit disability access groups in producing a heritage corridors access map, as defined in Section 5070.3, to be called the North Central California Heritage Corridor Trails and Disability Access Map.

SEC. 6. Section 5077.8 is added to the Public Resources Code, to read:

5077.8. In order to promote disability access along the heritage corridors, the director shall recognize the South Yuba Independence Trail South Yuba Project as one of California's primary wheelchair wilderness and backpacking trails.

SEC. 7. (a) If funds are not appropriated in the 1990–91 Budget Act, there are hereby appropriated from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund to the Department of Parks and Recreation, for expenditures during the 1990–91 to 1993–94 fiscal years, inclusive, the sum of twenty thousand dollars ($20,000) to be expended as matching grants to a cooperating nonprofit disability access group with ten thousand dollars ($10,000) being for production of camera ready copy of the California Heritage Trails and Disability Access Map and ten thousand dollars ($10,000) being for the printing thereof. Portions of that amount, as

determined by the Department of Parks and Recreation, shall be made available to the corridor group as soon as possible after a contract is signed with the department. The contract shall specify camera-ready map materials at 1:500,000 for the map front, informational data for the map back, and other conditions.

(b) There is hereby appropriated from the State Highway Account in the State Transportation Fund for expenditure in the 1990–91, 1991–92, and 1992–93 fiscal years the sum of five thousand dollars ($5,000) for matching grants to be made by the Department of Transportation to Placer and Nevada Counties for signing the North Lincoln Highway as it existed about 1930, from Roseville to Truckee along Taylor Road and other portions of old Highway 40. The signing shall consist of a new but historically appropriate Lincoln Highway sign, and also shall consist of signs to museums; historic landmarks; spur interest points such as the Highway 174/Bear River Bridge, Coloma, and the Donner Alder Creek Camp; vista points; roadside rests and overlooks; organized trails where appropriate; town historic districts; and with proper indication by blue signs to those facilities which include recognized disability access.

CHAPTER 1496

An act to amend Section 3123 of the Civil Code, relating to mechanics' liens.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 3123 of the Civil Code is amended to read:

3123. (a) The liens provided for in this chapter shall be direct liens, and shall be for the reasonable value of the labor, services, equipment, or materials furnished or for the price agreed upon by the claimant and the person with whom he or she contracted, whichever is less. The lien shall not be limited in amount by the price stated in the contract as defined in Section 3088, except as provided in Sections 3235 and 3236 and in subdivision (c) of this section.

(b) This section does not preclude the claimant from including in the lien any amount due for labor, services, equipment, or materials furnished based on a written modification of the contract or as a result of the rescission, abandonment, or breach of the contract. However, in the event of rescission, abandonment, or breach of the contract, the amount of the lien may not exceed the reasonable value of the labor, services, equipment, and materials furnished by the claimant.

(c) The owner shall notify the prime contractor and construction lenders of any changes in the contract if the change has the effect

of increasing the price stated in the contract by 5 percent or more.

CHAPTER 1497

An act to amend Section 23186 of, and to add Section 23186.5 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 23186 of the Revenue and Taxation Code is amended to read:

23186. (a) For income years ending in 1987, the rate of tax on banks and financial corporations shall be a percentage equal to the percentage of the total amount of net income, allocable to this state, of every corporation taxable under Article 2 (commencing with Section 23151) of this chapter, other than public utilities as defined in the Public Utilities Act, for the next preceding calendar year or fiscal years ended during such calendar year, required to be paid to this state as franchise taxes according to or measured by such net income, and required to be paid to this state or its political subdivisions by such corporations as personal property taxes and business license taxes during the preceding calendar year or fiscal years ended in such calendar year; provided, however, that said rate of tax shall not exceed 11.7 percent. The percentage of the net income of every corporation taxable under Article 2 (commencing with Section 23151) of this chapter, other than public utilities as defined in the Public Utilities Act, required to be paid to this state or its political subdivisions in personal property taxes and business license taxes shall be determined by ascertaining the ratio which the total amount of such personal property taxes and business license taxes, less the rate prescribed in Section 23151, bears to the total amount of net income of such corporations allocable to California, increased by the amount of such personal property taxes and business license taxes; provided, however, that if any such corporation sustains a net loss allocable to California the personal property taxes and business license taxes required to be paid by such corporation to this state or its political subdivisions during the preceding calendar year or fiscal years ended during such calendar year shall be considered for the purpose of determining such ratio only to the extent which such personal property taxes and business license taxes exceed such net loss allocable to California. Total amounts of net income shall be determined without regard to deductions attributable to carryover or carryback of net operating losses (if any).

(b) For income years ending in 1988 and thereafter, the rate of tax on banks and financial corporations shall be the lesser of 11.7 percent or a percentage equal to the sum of:

(1) The rate of tax specified in Section 23151 (relating to tax on general corporations), and

(2) The "in-lieu" rate, as defined by subdivision (c).

(c) The "in-lieu" rate is defined as a fraction:

(1) The numerator of which is the total amount required to be paid to this state and its political subdivisions as personal property taxes and business license taxes; and

(2) The denominator of which is the total amount of net income allocated and apportioned to this state, by every corporation taxable under Article 2 (commencing with Section 23151) of this chapter, other than public utilities as defined in the Public Utilities Act, for the year preceding the income year.

(3) For purposes of computing the "in-lieu" rate:

(A) Personal property and business license taxes paid by corporations whose net income is a loss for the year shall be included in the numerator only to the extent that the amount of personal property and business license taxes exceed that loss.

(B) After applying subparagraph (A), the numerator shall be reduced by the amount of tax savings that are attributable to the deduction of those taxes under this part.

(C) The denominator shall be increased to the extent that personal property and business license taxes paid were deducted in arriving at net income, and to the extent of any net operating loss deductions.

(d) For income years ending in 1982 and thereafter, for the purposes of subdivision (c), the total amount of personal property taxes and business license taxes required to be paid during the income year shall be based on a statistical sample by the Franchise Tax Board, consisting of all of the following:

(1) Every corporation with a net income determined without regard to deductions attributable to carryover or carryback of net operating losses (if any) of more than five million dollars ($5,000,000) for the income year.

(2) Every corporation required to pay one hundred thousand dollars ($100,000) or more of personal property tax or business license tax, or a combination thereof, during the income year.

(3) Two percent or more of all other corporations on a random basis.

For the purposes of this subdivision, "corporation" means a corporation taxable under Article 2 (commencing with Section 23151), other than public utilities as defined in the Public Utilities Act.

(e) For the purpose of verifying local business license taxes reported by corporations taxable under Article 2 (commencing with Section 23151), other than public utilities as defined in the Public Utilities Act, the Franchise Tax Board is authorized to receive source

information listings directly from the cities as to the amount of business license taxes paid and the date of payment for each taxpayer subject to the business license tax, notwithstanding any city ordinance prohibiting that disclosure.

(f) If, after notice and demand by the Franchise Tax Board, a taxpayer declines or refuses to furnish the Franchise Tax Board with information regarding personal property taxes, business license taxes, or net income required to determine the rate of tax on banks and financial corporations as provided by this section, then in that event, unless the failure is due to reasonable cause, the Franchise Tax Board shall disallow any deductions claimed by a taxpayer for the applicable period for personal property taxes and business license taxes and a penalty of five thousand dollars ($5,000) shall be assessed.

SEC. 2. Section 23186.5 is added to the Revenue and Taxation Code, to read:

23186.5. Notwithstanding Section 23186, for income years ending in 1990 and 1991, the rate of tax on banks and financial corporations shall be equal to the calculated rate that was determined for income years ending in 1989 pursuant to Section 23186.

SEC. 3. The Franchise Tax Board shall, with input from interested parties, submit a report to the Legislature no later than December 31, 1990, which recommends a methodology for calculating the rate of tax on banks and financial corporations without requiring business license tax and personal property tax information to be reported directly by taxpayers. The report shall also contain the projected revenue impact of the recommended methodology.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1498

An act to amend Section 66428 of the Government Code, relating to mobilehome parks.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 66428 of the Government Code is amended to read:

66428. (a) Local ordinances may require a tentative map where a parcel map is required by this chapter. A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless the preparation of the parcel map is waived by local ordinance as provided in this section. A parcel map shall not be required for: (1) subdivisions of a portion

of the operating right-of-way of a railroad corporation defined by Section 230 of the Public Utilities Code, which are created by short-term leases (terminable by either party on not more than 30 days' notice in writing), or (2) land conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map.

A local agency shall, by ordinance, provide a procedure for waiving the requirement for a parcel map, imposed by this division, including the requirements for a parcel map imposed by Section 66426. The procedure may include provisions for waiving the requirement for a tentative and final map for the construction of a condominium project on a single parcel. The ordinance shall require a finding by the legislative body or advisory agency, that the proposed division of land complies with such requirements as may have been established by this division or local ordinance enacted pursuant thereto as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of this division or local ordinance enacted pursuant thereto. In any case, where the requirement for a parcel map is waived by local ordinance pursuant to provisions of this section, a tentative map may be required by local ordinance.

If a local ordinance does not require a tentative map where a parcel map is required by this division, the subdivider shall have the option of submitting a tentative map or if he or she desires to obtain the rights conferred by Chapter 4.5 (commencing with Section 66498.1), a vesting tentative map.

(b) When at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to tenant-owned, condominium ownership interest, and a field survey is performed, the requirement for a parcel map or a tentative and final map specified by Section 66426, shall be waived unless any of the following exist:

(1) There are significant design or improvement requirements necessitated by health or safety concerns.

(2) Subsequent to recordation of the existing parcel or final map, there is an exterior boundary discrepancy that requires recordation of a new parcel or tentative and final map.

(3) The existing lot or lots were not created by a recorded parcel or final map.

(4) The conversion would result in the creation of additional parcels.

(c) The petition signed by owners of mobilehomes in a mobilehome park proposed for conversion to a tenant-owned, condominium ownership interest pursuant to subdivision (b) shall

read as follow:

MOBILEHOME PARK PETITION AND DISCLOSURE STATEMENT

SIGNING THIS PETITION INDICATES YOUR SUPPORT FOR CONVERSION OF THIS MOBILEHOME PARK TO A CONDOMINIUM INTEREST PROJECT. THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THE TOTAL COST FOR CONVERSION AND PURCHASE OF THE PARK IS $____ TO $_____, EXCLUDING FINANCING COSTS. THE TOTAL COST TO YOU FOR CONVERSION AND PURCHASE OF YOUR OWNERSHIP INTEREST IS $____ TO $_____, EXCLUDING FINANCING COSTS. IF TWO-THIRDS OF THE RESIDENTS IN THIS PARK SIGN THIS PETITION INDICATING THEIR INTENT TO PURCHASE THE MOBILEHOME PARK FOR PURPOSES OF CONVERTING IT TO A CONDOMINIUM INTEREST PROJECT, THEN THE REQUIREMENTS FOR A NEW PARCEL, OR TENTATIVE AND FINAL SUBDIVISION MAP IN COMPLIANCE WITH THE SUBDIVISION MAP ACT MUST BE WAIVED, WITH CERTAIN VERY LIMITED EXCEPTIONS. WAIVING THESE PROVISIONS OF LAW ELIMINATES NUMEROUS PROTECTIONS WHICH ARE AVAILABLE TO YOU.

_____ _____

Buyer, unit #, date Petitioner, date

After the waiver application is deemed complete pursuant to Section 65943, the local agency shall approve or deny the application within 60 days. The applicant shall have the right to appeal that decision to the governing body of the local agency.

If a tentative or parcel map is required, the local agency shall not impose any onsite or offsite design or improvement requirements unless necessary to mitigate an existing health or safety condition. No other dedications, improvements, or in-lieu fees shall be required by the local agency. In no case shall the mitigation of a health or safety condition have the effect of reducing the number or changing the location of existing mobilehome spaces.

If the local agency imposes requirements on an applicant to mitigate a health or safety condition, the applicant and the local agency shall enter into an unsecured improvement agreement. The local agency shall not require bonds or other security devices pursuant to Chapter 5 (commencing with Section 66499) for the performance of that agreement. The applicant shall have a period of one year from the date the agreement was executed to complete those improvements.

SEC. 2. Notwithstanding Section 17610 of the Government Code,

if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1499

An act to add Section 10149 to the Business and Professions Code, to add Section 2079.8 to the Civil Code, relating to real estate transactions.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 10149 is added to the Business and Professions Code, to read:

10149. (a) On or before January 1, 1992, the Seismic Safety Commission shall develop, adopt, and publish a Homeowner's Guide to Earthquake Preparedness for distribution to licensees for purposes of Section 2079.8 of the Civil Code and, upon request, to any member of the general public.

(b) In developing the guide, the Seismic Safety Commission shall consult with the Office of Emergency Services, the Division of Mines and Geology of the Department of Conservation, the Department of Real Estate, and other interested agencies and persons.

(c) The commission shall, to the extent possible, rely on currently available data to develop the guide. To the extent necessary, the commission may contract for the development and production of the guide. The commission shall update the contents of the guide whenever it determines that information within the guide is sufficiently inaccurate or incomplete so as to reduce the effectiveness of the guide. The commission shall charge a fee to cover the costs of production, distribution, development, and updating the guide.

(d) The guide shall include, but need not be limited to, all of the following:

(1) Maps and information on geologic and seismic hazard conditions for all areas of the state.

(2) Explanations of the related structural and nonstructural

hazards.

(3) Recommendations for mitigating the hazards of an earthquake.

(4) A statement that there are no guarantees of safety or damage prevention that can be made with respect to a major earthquake and that only precautions, such as retrofitting, can be taken to reduce the risk of various types of eathquake damage. For purposes of preparing the statement, the department shall confer with insurers and design professional associations.

SEC. 2. Section 2079.8 is added to the Civil Code, to read:

2079.8. (a) If a Homeowner's Guide to Earthquake Preparedness described in Section 10149 of the Business and Professions Code is delivered to a transferee in connection with the transfer of real property, including property specified in Section 1102 or under Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code, a seller or broker is not required to provide additional information concerning, and the information shall be deemed to be adequate to inform the transferee regarding, geologic and seismic hazards, in general, as described in the guide, that may affect real property and mitigating measures that the transferee or seller might consider.

(b) Notwithstanding subdivision (a), nothing in this section increases or decreases the duties, if any, of sellers or brokers, including, but not limited to, the duties of a seller or broker under this article, Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2, or under Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code, or alters the duty of a seller or broker to disclose the existence of known hazards on or affecting the real property.

CHAPTER 1500

An act to amend Sections 76.3 and 76.6 of, and to add Sections 77 and 77.1 to, the Harbors and Navigation Code, relating to boating.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 76.3 of the Harbors and Navigation Code is amended to read:

76.3. (a) The department may make loans to private marina owners for construction costs, not including planning, design, and other similar expenses, to develop a recreational marina. Loan funds from the department shall be utilized for berthing facilities, dredging, parking, public access facilities, restrooms, vessel pumpout facilities, utilities, landscaping, and other incidental boating-related

amenities.

(b) No loan made by the department to a private marina owner shall exceed 50 percent of the funds annually budgeted for purposes of this article.

(c) The department shall not make a loan to a recreational marina that restricts access or bars the public other than what is consistent with general commercial business practices.

(d) Any private marina owner who purchases facilities previously developed with a department loan is eligible to apply for a new construction loan from the department.

SEC. 1.5. Section 76.3 of the Harbors and Navigation Code is amended to read:

76.3. (a) The department may make loans to private marina owners for construction costs, not including planning, design, and other similar expenses, to develop a recreational marina. Loan funds from the department may be utilized for berthing facilities, dredging, parking, public access facilities, restrooms, vessel pumpout facilities, oil recycling facilities, utilities, landscaping, receptacles for the purpose of separating, reusing, or recycling all solid waste materials, and other incidental boating-related amenities.

(b) No loan made by the department to a private marina owner shall exceed 50 percent of the funds annually budgeted for purposes of this article.

(c) The department shall not make a loan to a recreational marina that restricts access or bars the public other than what is consistent with general commercial business practices.

(d) Any private marina owner who purchases facilities previously developed with a department loan is eligible to apply for a new construction loan from the department.

SEC. 2. Section 76.6 of the Harbors and Navigation Code is amended to read:

76.6. Loans made under this article shall include, but are not limited to, the following terms and conditions:

(a) The annual rate of interest charged by the department shall be a rate equal to 1 percent per annum plus the prevailing rate of interest existing in the marketplace for lending institutions' most creditworthy borrowers. For purposes of this article, the prevailing rate of interest existing in the marketplace for lending institutions' most creditworthy borrowers means the prime or base rate of interest.

(b) The department shall require collateral in the amount of 110 percent of the loan.

(c) The length of a loan shall not exceed 20 years, or be longer than the length of the borrower's leasehold estate, including renewal options, if the loan is based upon a leasehold estate of the borrower.

(d) All loans shall amortize the principal over the term of the loan. However, a loan shall become due and payable in full if the borrower sells or otherwise transfers the recreational marina developed with departmental funds, unless the transfer is, by reason of the death of

the borrower, to the borrower's heirs, or the transfer is to another business entity controlled by the borrower in a transaction that does not result in a material change in control or ownership of the recreational marina.

(e) The department's loans shall not be subordinated to any future loans obtained by a private marina owner, except in those cases involving loans acquired for refinancing previous senior loans.

SEC. 3. Section 77 is added to the Harbors and Navigation Code, to read:

77. (a) The department, subject to the approval of the Director of Finance, may borrow funds from the Harbors and Watercraft Revolving Fund when a borrower has defaulted from any financial obligation and funds are required to protect the security interest of the department with respect to any loan made under Section 76.3.

(b) The funds borrowed under this section shall be repaid within three years from the date of the approval of the Director of Finance. The repayment shall include the principal amount of the loan, plus interest equal to the rate of earnings of money deposited in the Surplus Money Investment Fund at the time the loan is approved by the Director of Finance.

(c) A maximum of ten million dollars ($10,000,000) per year may be used for purposes of this section.

(d) The borrowed funds may be used to do any of the following:

(1) Pay any administrative and legal expenses incurred in connection with those defaults.

(2) Acquire through negotiated purchase or bid at auction any property which serves as collateral for those defaulted loans.

(3) Pay any costs of operating and maintaining a recreational marina acquired as a result of a failed loan, until the marina is sold.

SEC. 4. Section 77.1 is added to the Harbors and Navigation Code, to read:

77.1. The department, upon whatever terms and conditions it deems proper, may sell or otherwise dispose of property serving as collateral for a defaulted loan made under Section 76.3 or may operate, contract to operate, or let property involved in the default. All proceeds from any action of the department pursuant to this section shall be deposited in the Harbors and Watercraft Revolving Fund and credited towards the repayment of the defaulted loan.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 76.3 of the Harbors and Navigation Code proposed by both this bill and AB 3559. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 76.3 of the Harbors and Navigation Code, and (3) this bill is enacted after AB 3559, in which case Section 1 of this bill shall not become operative.

CHAPTER 1501

An act to add Sections 44227.7 and 56244 to the Education Code, relating to schools.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The National Institutes of Health states that 10 to 15 percent of our population have learning disabilities.

(b) In California, dyslexia is a specific language disability that often goes undetected in many children.

(c) Preservice and in-service programs for regular education and special education teachers in California need to provide more emphasis on recognizing characteristics of pupils with dyslexia and need updated teaching strategies for public school pupils with dyslexia and its related disorders.

(d) Regular education and special education teachers in California do not have state program guidelines available to them as a resource to assist them in identifying, assessing, planning, providing, evaluating, and improving educational services to pupils with dyslexia and its related disorders.

SEC. 2. (a) The Superintendent of Public Instruction shall develop program guidelines for specific learning disabilities, including dyslexia and other related disorders, for use by regular and special educators and parents to assist them in identifying, assessing, planning, providing, evaluating, and improving educational services to pupils. The program guidelines shall include characteristics typical of pupils with dyslexia and related disorders and include strategies for their remediation. The superintendent shall consult with teachers, administrators, other education professionals, medical professionals, parents, and professionals involved in the identification and treatment of specific learning disabilities, including dyslexia and other related disorders. The program guidelines shall be completed in time for use no later than the beginning of the 1992–93 academic year. Once the program guidelines are completed, the superintendent shall disseminate them, and provide technical assistance regarding their use and implementation, to parents, teachers, administrators, and faculty members in teacher training programs of institutions of higher education.

(b) The State Department of Education shall use available discretionary federal funds for the purpose of developing program guidelines as required under subdivision (a).

SEC. 3. Section 44227.7 is added to the Education Code, to read:

44227.7. The Legislature encourages institutions of higher education to provide, in teacher training programs, increased emphasis on the recognition of, and teaching strategies for, specific learning disabilities, including dyslexia and related disorders. Experts in the field of these disabilities should be utilized for that purpose.

SEC. 4. Section 56244 is added to the Education Code, to read:

56244. The Legislature encourages the inclusion, in local in-service training programs for regular education teachers and special education teachers in school districts, special education local plan areas, and county offices of education, of a component on the recognition of, and teaching strategies for, specific learning disabilities, including dyslexia and related disorders.

CHAPTER 1502

An act to add Chapter 12 (commencing with Section 57501), Chapter 13 (commencing with Section 57551), and Chapter 14 (commencing with Section 57700) to Division 20 of the Food and Agricultural Code, relating to agricultural liens.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 12 (commencing with Section 57501) is added to Division 20 of the Food and Agricultural Code, to read:

CHAPTER 12. POULTRY AND FISH SUPPLY LIEN

Article 1. Definitions

57501. "Eggs or egg" means eggs or egg products as defined in Section 27512, 27513, or 27514.

57502. "Feed or materials" means commercial feed, grain, forage, feed ingredients, mineral feed, drugs, poultry or fish health products, customer-formula feed, any mixture or preparation for feeding poultry or fish, any of the constituent nutrients of a poultry or fish ration, or any other food which is used for the feeding of poultry or fish.

57503. "Fowl" means chickens, turkeys, ducks, geese, and other domesticated birds.

57504. "Poultry" means domesticated fowl and domesticated rabbit which is intended for use for human food.

57505. "Proceeds" means funds derived from the sale of eggs, poultry, fish, or other products derived from eggs, poultry, or fish payable to the lien debtor. "Proceeds" do not include any of the

following:

(a) Deductions for taxes, fees, and assessments.

(b) Funds due or owing egg or poultry processing cooperative associations organized and operating pursuant to Chapter 1 (commencing with Section 54001).

(c) Funds retained by the cooperative association.

(d) Deductions made pursuant to a court order.

57506. "Raising or maintaining of poultry or fish" means feeding, housing, caring for, and managing poultry or fish kept or raised for use or profit.

57507. "Reasonable or agreed charges" means the agreed price, if any, for the feed and materials sold to the lien debtor, at the lien debtor's request. If there is no agreed price or a method for determining price which is agreed upon, "reasonable or agreed charges" means the reasonable value of the feed or materials as of the date of delivery.

Article 2. Poultry and Fish Supply Lien

57510. A person who provides feed or materials to aid the raising or maintaining of poultry or fish or for the production of eggs has a lien upon the proceeds of the sale of the eggs, poultry, fish, or other products derived from eggs, poultry, or fish, for the reasonable or agreed charges for the feed or materials provided, and for the costs of enforcing the lien. However, the amount of charges secured by the lien shall not exceed an amount equal to the reasonable or agreed charges for feed or material provided within a 45-day period, and only two providers of feed or materials shall have an enforceable lien at any time according to the priority set forth in Section 57525.

57511. (a) The lien created pursuant to this chapter attaches to the proceeds.

(b) Except as otherwise provided in this chapter, the notice of claim of lien shall remain in effect, and no new notice of claim of lien shall be required in order to maintain the lien, as long as the person who provides feed or materials either (1) remains unpaid for amounts secured by the lien, or (2) continues to provide feed or materials on a regular basis to the lien debtor. For purposes of this section, providing feed or materials shall not be deemed to be made on a regular basis if a period of more than 30 days elapses between deliveries.

57512. The lien created by this chapter shall be perfected and shall be effective upon the filing of a notice of claim of lien with the Secretary of State pursuant to this article.

57513. Any person who provides feed or materials may, at any time, file in the manner and at the place set forth in this article, the notice of claim of lien.

57514. The notice of claim of lien shall contain all of the following information:

(a) The name and address of the lien claimant.

(b) The name and address of the lien debtor.

(c) The location of the property to which the feed and materials were delivered.

(d) That the lien claimant has a poultry or fish supply lien pursuant to Section 57510.

57515. The notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

57516. The notice of claim of lien shall be filed on a form which is the standard form of original financing statement prescribed by the Secretary of State pursuant to Section 9403 of the Commercial Code. The standard form shall be completed with the following changes:

(a) The lien claimant may be identified either as a lien claimant or as a secured party.

(b) The form shall be signed by the lien claimant and need not be signed by the lien debtor.

(c) In the space for the description of the collateral there shall instead be entered the information specified in subdivisions (c) and (d) of Section 57514.

57517. The notice of claim of lien shall be filed, indexed, and marked in the office of the Secretary of State in the same manner as a financing statement is filed, indexed, and marked pursuant to Section 9403 of the Commercial Code.

57518. The lien claimant shall provide written notice of the claim of lien to the lien debtor within 10 days of the date of the filing with the office of the Secretary of State.

57519. For the purpose of the Secretary of State's index pursuant to Section 9403 of the Commercial Code and for the purpose of the issuance of a certificate pursuant to Section 9407 or 9409 of the Commercial Code, the Secretary of State shall identify a notice pursuant to this article as a financing statement.

Article 3. Priority of Liens

57525. (a) The lien created by this chapter shall have the priority in accordance with the time the notice of claim of lien is filed.

(b) The lien created by this chapter shall have the same priority as a security interest perfected by the filing of a financing statement as of the date the notice of claim of lien was filed.

Article 4. Information Concerning Lien

57530. A member of the public may obtain a certificate identifying whether there is a lien on file and any notice of claim of lien naming a particular debtor, and if so, giving the date and time of filing of each notice, and the names and addresses of each lienholder therein. The fee for the certificate is the same as the fee for a certificate issued pursuant to Section 9407 of the Commercial

Code.

57531. A member of the public may obtain a copy of any notice of claim of lien filed pusuant to this chapter, including notices affecting the notices. The fee for these copies shall be the same as that prescribed in Section 9407 of the Commercial Code.

Article 5. Enforcement of Lien

57535. The lien claimant shall provide written notice to secured creditors at least 30 days prior to enforcing a claim of lien. For the purposes of this section, "secured creditors" means those creditors having a perfected security interest in poultry, eggs, poultry products, fish, fish products, or the proceeds thereof, as of the date the notice of claim of lien is filed with the Secretary of State.

57536. The lien claimant shall foreclose on a lien created by this chapter only in an action to recover the reasonable or agreed charges for feed and materials provided. The final judgment shall be enforced pursuant to Title 9 (commencing with Section 680.010) of the Code of Civil Procedure.

57537. (a) When a lien claimant receives payment for the total amounts secured by the lien and the lien claimant has not provided feed for materials for a period of 30 consecutive days, the lien claimant shall, on written demand by the debtor, send the debtor a statement that he or she no longer claims a security interest under the statement, which shall be identified by the date, names of parties thereto, and file number. If the affected lienholder of record fails to send the termination statement within 10 days after proper demand therefor, he or she is liable to the debtor for actual damages suffered by the debtor by reason of this failure, and, if the failure is in bad faith, for a penalty of one hundred dollars ($100).

(b) The filing officer shall mark each termination statement with the date and time of filing and shall index the statement under the name of the lien debtor and under the file number of the original lien. If the filing officer has a microfilm or other photographic record of the lien and related filings, he or she may remove and destroy the originals from the files at any time after receipt of the termination statement. If the filing officer does not have the record, he or she may remove and destroy the originals from the files at any time after one year after receipt of the termination statement.

Article 6. Assignment of Lien

57540. A lien created pursuant to this chapter is assignable or transferable by the holder of the lien, with full rights of enforcement. The lienholder shall file a statement of assignment or transfer with the Secretary of State in the same manner as a secured party's statement of assignment or transfer as prescribed in Section 9406 of the Commercial Code.

57541. Except to the extent specifically set forth in this chapter,

the lien created by this chapter is subject to Division 9 (commencing with Section 9101) of the Commercial Code.

Article 7. Miscellaneous

57545. The Secretary of State may adopt any regulations necessary to carry our his or her duties pursuant to this chapter, including prescribing necessary forms.

SEC. 2. Chapter 13 (commencing with Section 57551) is added to Division 20 of the Food and Agricultural Code, to read:

CHAPTER 13. AGRICULTURAL CHEMICAL AND SEED LIEN

Article 1. Definitions

57551. "Agricultural chemical" means fertilizers, fertilizer material, lime, chemical compounds, pesticides, pesticide chemicals, plant regulators, plant amendments, plant food, soil amendments, herbicides, fungicides, and agricultural chemicals that are applied to crops or to land that is used for the raising of crops.

57552. "Agricultural seed" means the seed of any domesticated grass or cereal, of any vegetable, flower, or propagated plant, and of any legume or other plant which is grown as turf, cover crop, forage crop, fiber crop, or field crop, and mixtures of the seed.

57553. "Labor" means labor or service performed in the application, delivery, or preparation of an agricultural chemical or agricultural seed provided by the seller of the agricultural chemical or agricultural seed.

57554. "Proceeds" means funds received by the lien debtor from the sale of the crop on which the agricultural chemical was applied or for which the agricultural seed was used. "Proceeds" do not include any of the following:

(a) Deductions for taxes, fees, and assessments.

(b) Funds due or owing to a cooperative association organized and operating pursuant to Chapter 1 (commencing with Section 54001).

(c) Funds retained by the cooperative association.

(d) Deductions made pursuant to a court order.

57555. "Reasonable or agreed charges" means the agreed price, if any, for agricultural chemicals or agricultural seeds sold to the lien debtor, at the lien debtor's request, and for labor. If there is no agreed price or a method for determining price which is agreed upon, "reasonable or agreed charges" means the reasonable value of the agricultural chemicals and labor or agricultural seeds and labor as of the date of application, delivery, or preparation.

Article 2. Agricultural Chemical and Seed Lien

57561. (a) A person who provides agricultural chemical or agricultural seed is not entitled to establish a lien pursuant to this chapter, unless that person has first sent to the lien debtor a written notice, by certified mail, which states all of the following:

(1) The payment of the reasonable or agreed charges is more than 30 days overdue. This requirement does not apply to deliveries of agricultural chemicals and seed and related labor that are made subsequent to deliveries which are overdue.

(2) The amount of reasonable or agreed charges that are overdue.

(3) The lien debtor has the following three alternatives:

(A) Allow the lien to be filed.

(B) Enter into a consensual security interest in the proceeds, pursuant to the Commercial Code.

(C) Pay the reasonable or agreed charges that are overdue.

(4) In 10-point type or bolder, notify the lien debtor that he or she has 10 days from receipt of the notice to select an alternative, notify the lien claimant of the alternative selected, and satisfy all the requirements of the selected alternative, and that the lien claimant may file the notice of claim of lien pursuant to this chapter at any time thereafter if the lien debtor does not comply with the requirements of this section.

(b) A person who provides agricultural chemical or agricultural seed, and has complied with subdivision (a), has a lien upon the proceeds of the crop for the reasonable or agreed charges and for the costs of enforcing the lien.

(c) The lien established pursuant to this chapter attaches to the proceeds of the following:

(1) The crops that existed at the time of application upon the land where the agricultural chemical was applied.

(2) If crops are not planted, the next production crop on that land following the last date on which the agricultural chemical was applied.

(3) The crops produced from the agricultural seed.

(d) The amount of charges secured by the lien shall not exceed an amount equal to the reasonable or agreed charges for agricultural chemicals furnished within a 60-day period and for agricultural seeds furnished within a 45-day period.

57562. Except as otherwise provided in this chapter, the notice of claim of lien shall remain in effect, and no new notice of claim of lien shall be required in order to maintain the lien, as long as the person who provides the agricultural chemicals and labor or agricultural seeds and labor either (1) remains unpaid for the amounts secured by the lien; or (2) continues to provide agricultural chemicals and labor or agricultural seeds and labor on a regular basis to the lien debtor. For purposes of this section, providing agricultural chemicals and labor or agricultural seeds and labor shall not be deemed to be made on a regular basis if a period of more than 45 days elapses

between applications, deliveries, or preparations.

57563. The lien created by this chapter shall be perfected and shall be effective upon the filing of a notice of claim of lien with the Secretary of State pursuant to this article.

57564. Any person who provides agricultural chemicals or agricultural seeds may file in the manner and at the place set forth in Section 57568, the notice of claim of lien. The lien claimant may not file a notice of claim of lien upon the proceeds of crops for agricultural seeds and labor furnished by the lien claimant if an investigation of a dispute between the lien claimant and the lien debtor is pending pursuant to subdivision (g) of Section 52332. The lien claimant may not file a notice of claim of lien upon the proceeds of crops for agricultural chemicals and labor furnished by the lien claimant, if the settlement of a dispute between the lien claimant and the lien debtor is pending, or has not been resolved pursuant to Section 57564.5.

57564.5. (a) The director shall, by regulation, establish methods and procedures for the settlement of a dispute between a lien claimant supplying agricultural chemicals and labor and a lien debtor, including, but not limited to, the following:

(1) Time requirements for submitting the dispute to the department.

(2) Time requirements within which a notice of the dispute shall be submitted to each party.

(3) A process for evaluating the dispute.

(b) Each party to the dispute is equally liable for the reasonable costs incurred by the department in carrying out this section.

57565. The notice of claim of lien shall contain all of the following information:

(a) The name and address of the lien claimant.

(b) The name and address of the lien debtor.

(c) The location of the property to which the agricultural chemicals and labor or agricultural seeds and labor were provided.

(d) A statement that the payment of the reasonable or agreed charges is more than 30 days overdue.

(e) The amount of the reasonable or agreed charges that are overdue.

(f) A statement, signed under penalty of perjury, that the lien claimant sent to the lien debtor the notice required pursuant to subdivision (a) of Section 57561, that more than 10 days have elapsed since the notice was received by the lien debtor, and that the lien debtor has not complied with the requirements of subdivision (a) of Section 57561.

(g) That the lien claimant has an agricultural chemical and agricultural seed lien pursuant to Section 57561.

57566. The notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

57567. The notice of claim of lien shall be filed on a form which

is the standard form of original financing statement prescribed by the Secretary of State pursuant to Section 9403 of the Commercial Code. The standard form shall be completed with the following changes:

(a) The lien claimant may be identified either as a lien claimant or as a secured party.

(b) The form shall be signed by the lien claimant and need not be signed by the lien debtor.

(c) In the space for the description of the collateral there shall instead be entered the information specified in subdivisions (c) to (g), inclusive, of Section 57565.

(d) Attached to the form shall be a separately signed statement containing the information specified in subdivision (f) of Section 57565.

57568. The notice of claim of lien shall be filed, indexed, and marked in the office of the Secretary of State in the same manner as a financing statement is filed, indexed, and marked pursuant to Section 9403 of the Commercial Code.

57569. The lien claimant shall provide written notice of the claim of lien to the lien debtor within 10 days of the date of the filing with the office of the Secretary of State.

57570. For the purpose of the Secretary of State's index pursuant to Section 9403 of the Commercial Code and for the purpose of the issuance of a certificate pursuant to Section 9407 or 9409 of the Commercial Code, the Secretary of State shall identify a notice pursuant to this article as a financing statement.

Article 3. Priority of Lien

57575. (a) The lien created pursuant to this chapter shall have the priority in accordance with the time the notice of claim of lien is filed.

(b) The lien created pursuant to this chapter shall have the same priority as a security interest perfected by the filing of a financing statement as of the date the notice of claim of lien was filed.

(c) The lien created pursuant to this chapter shall not have priority over labor claims for wages and salaries for personal services which are provided by any employee to any lien debtor in connection with the production of agricultural products, the proceeds of which are subject to the lien.

Article 4. Information Concerning Lien

57581. A member of the public may obtain a certificate identifying whether there is a lien on file and any notice of claim of lien naming a particular debtor, and if so, giving the date and time of filing of each notice, and the names and addresses of each lienholder in the certificate. The fee for the certificate is the same as the fee for a certificate issued pursuant to Section 9407 of the

Commercial Code.

57582. A member of the public may obtain a copy of any notice of an agricultural chemical or seed lien filed, including notices affecting the notices. The fee for these copies shall be the same as that prescribed in Section 9407 of the Commercial Code.

Article 5. Enforcement of Lien

57585. The lien claimant shall provide written notice to secured creditors at least 30 days prior to enforcing a claim of lien. For purposes of this section, "secured creditors" means any entity named as a secured party in a financing statement filed with regard to the debtor and which covers crops subject to the lien, crops growing or grown on the land, or the next production crops to be grown on the land if the crops are not planted, where the agricultural chemical or agricultural seed was provided or applied, farm products, or accounts.

57586. The lien claimant shall foreclose on a lien created by this chapter only in an action to recover the reasonable or agreed charges. The final judgment shall be enforced pursuant to Title 9 (commencing with Section 680.010) of the Code of Civil Procedure.

57587. (a) When a lien claimant receives payment for the total amounts secured by the lien and the lien claimant has not furnished agricultural chemicals or seeds for a period of 45 consecutive days, the lien claimant shall send the lien debtor a statement that he or she no longer claims a security interest under the notice of claim of lien, which shall be identified by the date, names of parties thereto, and file number. If the affected lienholder of record fails to send the termination statement within 10 days, he or she is liable to the debtor for all actual damages suffered by the debtor by reason of this failure, and if the failure is in bad faith, for a penalty of one hundred dollars ($100).

(b) The filing officer shall mark each termination statement with the date and time of filing and shall index the statement under the name of the lien debtor and under the file number of the original lien. If the filing officer has a microfilm or other photographic record of the lien and related filings, he or she may remove and destroy the originals from the files at any time after receipt of the termination statement. If the filing officer does not have the record, he or she may remove and destroy the originals from the files at any time after one year after receipt of the termination statement.

Article 6. Assignment of Lien

57590. (a) A lien created pursuant to this chapter is assignable or transferable by the holder of the lien, with full rights of enforcement.

(b) The lienholder shall file a statement of assignment or transfer with the office of the Secretary of State in the same manner that a statement is filed pursuant to Section 9406 of the Commercial Code.

57591. Except to the extent specifically set forth in this chapter, the lien created by this chapter is subject to Division 9 (commencing with Section 9101) of the Commercial Code.

Article 7. Miscellaneous

57595. The Secretary of State may adopt any regulations necessary to carry out his or her duties pursuant to this chapter, including prescribing necessary forms.

SEC. 3. Chapter 14 (commencing with Section 57700) is added to Division 20 of the Food and Agricultural Code, to read:

CHAPTER 14. LIMITATION ON NONCONSENSUAL SUPPLIER LIENS

57700. No more than two liens filed pursuant to Chapter 12 (commencing with Section 57501) and Chapter 13 (commencing with Section 57551) shall be enforceable against any one lien debtor, even if filed by different lien claimants.

CHAPTER 1503

An act to amend Sections 14543, 14571, 14583, and 14611 of, and to add Sections 14546 and 14586 to, the Food and Agricultural Code, relating to fertilizing materials, and making an appropriation therefor.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 14543 of the Food and Agricultural Code is amended to read:

14543. The board shall be advisory to the director and may make recommendations on all matters pertaining to this chapter, including, but not limited to, the inspection and enforcement program, research and education, the annual budget, necessary fees to provide adequate inspection services, and regulations required to accomplish the purposes of this chapter.

SEC. 2. Section 14546 is added to the Food and Agricultural Code, to read:

14546. The director shall accept the recommendations of the advisory board pertaining to subdivision (b) of Section 14571 if he or she finds them to be practicable and in the interests of the fertilizer industry and the public. If the director does not accept the recommendations of the advisory board, or any part thereof, the director shall provide the board with a written statement within 15 working days of making his or her decision stating the reasons for not

accepting the recommendations, or any part thereof.

SEC. 3. Section 14571 of the Food and Agricultural Code is amended to read:

14571. (a) Each manufacturer, label guarantor, or registrant, whose name appears on the label, shall pay to the director an assessment not to exceed two mills ($0.002) per dollar of sales, for all sales of commercial fertilizers, agricultural minerals, or auxiliary soil and plant substance products. Each person licensed in accordance with Article 4 (commencing with Section 14551) shall pay to the director an assessment not to exceed two mills ($0.002) per dollar of sales, for all sales of bulk commercial fertilizers, agricultural minerals, or auxiliary soil and plant substance products to unlicensed purchasers in this state if the assessment was not paid pursuant to any other requirements of this section. A mill tax assessment for packaged soil amendments shall be one-half of the rate established for commercial fertilizer, agricultural minerals, or auxiliary soil and plant substance products. The director may, based on the finding and recommendation of the board, reduce the mill tax assessment rate to a lower rate which provides sufficient revenue to carry out this chapter.

(b) In addition to the assessment provided in subdivision (a), the director may impose an assessment in an amount not to exceed one mill ($0.001) per dollar of sales on the fertilizers, minerals, and other products described in subdivision (a), to provide funding for research and education regarding the use and handling of commercial and organic fertilizers, including, but not limited to, any environmental effects.

SEC. 4. Section 14583 of the Food and Agricultural Code, as added by Senate Bill 2049 of the 1989–90 Regular Session, is amended to read:

14583. The board shall be advisory to the director and may make recommendations on all matters pertaining to this chapter including, but not limited to, the inspection and enforcement program, research and education, the annual budget, necessary fees to provide adequate inspection services, and regulations required to accomplish the purposes of this chapter.

SEC. 5. Section 14586 is added to the Food and Agricultural Code, to read:

14586. The director shall accept the recommendations of the advisory board pertaining to subdivision (b) of Section 14611 if he or she finds them to be practicable and in the interests of the fertilizer industry and the public. If the director does not accept the recommendations of the advisory board, or any part thereof, the director shall provide the board with a written statement within 15 working days of making his or her decision stating the reasons for not accepting the recommendations, or any part thereof.

SEC. 6. Section 14611 of the Food and Agricultural Code, as added by Senate Bill 2049 of the 1989–90 Regular Session, is amended to read:

14611. (a) Each manufacturer, label guarantor, or registrant, whose name appears on the label, shall pay to the director an assessment not to exceed two mills ($0.002) per dollar of sales, for all sales of fertilizing materials. Each person licensed pursuant to Article 4 (commencing with Section 14591) shall pay to the director an assessment not to exceed two mills ($0.002) per dollar of sales, for all sales of bulk commercial fertilizers, agricultural minerals, or auxiliary soil and plant substance products to unlicensed purchasers in this state if the assessment was not paid pursuant to any other requirements of this section. The director may, based on the finding and recommendation of the board, reduce the mill tax assessment rate to a lower rate which provides sufficient revenue to carry out this chapter.

(b) In addition to the assessment provided in subdivision (a), the director may impose an assessment in an amount not to exceed one mill ($0.001) per dollar of sales on the fertilizers, minerals, and other products described in subdivision (a), to provide funding for research and education regarding the use and handling of commercial and organic fertilizers, including, but not limited to, any environmental effects.

SEC. 7. Sections 4, 5, and 6 of this act shall only become operative if Senate Bill 2049 of the 1989–90 Regular Session is also chaptered, in which case Sections 1, 2, and 3 of this act shall not become operative.

CHAPTER 1504

An act to amend Section 199.59 of the Health and Safety Code, relating to AIDS, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 199.59 of the Health and Safety Code is amended to read:

199.59. (a) The recipients of the grants shall use the moneys of the grant to develop an AIDS vaccine until the Federal Food and Drug Administration (FDA) approves the clinical testing of an AIDS vaccine on humans. Any grant funds not encumbered or expended at the time of the FDA approval of the clinical testing of an AIDS vaccine on humans shall not be used by the recipients until the state department authorizes further expenditure or requires the funds to be returned to the AIDS Vaccine Research and Development Grant Fund pursuant to subdivision (b).

(b) If an AIDS vaccine which has received FDA approval for

clinical testing on humans has been developed by a grant recipient pursuant to this chapter, then any funds which have been granted to, but not expended or encumbered by, the grant recipient, after approval by the state department, shall be expended for the clinical testing of the vaccine on humans in accordance with the FDA protocol, the continued research and development of the vaccine, or both, for the purpose of optimizing the efficacy of the vaccine during clinical testing.

With respect to the other grant recipients, or when none of the recipients have received the FDA approval for the vaccine they are developing, the committee shall meet to consider whether the grant recipient has a good chance of developing a vaccine which will receive FDA approval for clinical testing on humans and shall make recommendations to the state department. If the state department, taking into consideration the committee's recommendations, determines that the grant recipient has a good chance of developing an FDA approved vaccine, it shall inform the grant recipient in writing to continue expending its grant funds for the development of an AIDS vaccine.

If the state department, taking into consideration the committee's recommendations, determines that the grant recipient does not have a good chance of developing a vaccine which will receive FDA approval for clinical testing on humans, it shall inform the recipient in writing that the funds not encumbered or expended, as described in subdivision (a), shall be returned to the state department for deposit in the AIDS Vaccine Research and Development Grant Fund.

Any funds remaining in the AIDS Vaccine Research and Development Grant Fund after the state department's determinations pursuant to this subdivision, shall, in the state department's discretion, either be expended for (1) further support of the clinical trials of a vaccine developed in whole or in part by a grant recipient or for (2) further research and development of a vaccine by a grant recipient who has been permitted, in accordance with this subdivision, to continue expending grant funds for development of a vaccine, or be expended for (3) both purposes. If no grant recipient is conducting clinical trials or developing a vaccine pursuant to this subdivision, then the moneys in the AIDS Vaccine Research and Development Grant Fund shall revert to the General Fund.

(c) Notwithstanding any other provision of this section, the state department may make grants to applicants even after approval has been given by the federal Food and Drug Administration to conduct clinical testing of an AIDS vaccine on humans.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Funds necessary to continue research for an AIDS vaccine during

clinical trials will be lost in the absence of the passage of this act and therefore in order to avoid an end to critically needed research, it is necessary that this act go into immediate effect.

CHAPTER 1505

An act to add Chapter 2.7 (commencing with Section 800) to Title 2 of Part 2 of Division 2 of the Civil Code, relating to floating homes.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.7 (commencing with Section 800) is added to Title 2 of Part 2 of Division 2 of the Civil Code, to read:

CHAPTER 2.7. FLOATING HOME RESIDENCY LAW

Article 1. General Provisions

800. This chapter shall be known and may be cited as the Floating Home Residency Law.

800.1. Unless the provisions or context otherwise requires, the following definitions shall govern the construction of this chapter.

800.2. "Management" means the owner of a floating home marina or an agent or representative authorized to act on his or her behalf in connection with matters relating to a tenancy in the floating home marina.

800.3. "Floating home" has the same meaning as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code.

800.4. "Floating home marina" means an area where five or more floating home berths are rented, or held out for rent, to accommodate floating homes, but does not include a marina where 10 percent or fewer of the berths are leased or held out to lease to floating homes.

800.5. "Rental agreement" means an agreement between the management and the homeowner establishing the terms and conditions of a tenancy. A lease is a rental agreement.

800.6. "Homeowner" means a person who owns or resides in a floating home which is in a floating home marina pursuant to a rental agreement with management.

800.7. "Change of use" means a use of the floating home marina for a purpose other than the rental, or the holding out for rent, of five or more floating home berths, and does not mean the adoption, amendment, or repeal of a floating home marina rule or regulation. A change of use may affect an entire floating home marina or any portion thereof. "Change of use" includes, but is not limited to, a

change of the floating home marina or any portion thereof to a condominium, stock cooperative, or any form of ownership wherein spaces within the floating home marina are to be sold.

800.8. "Resident" means a homeowner or other person who lawfully occupies a floating home.

800.9. "Tenancy" means the right of a homeowner to the use of a berth within a floating home marina on which to locate, maintain, and occupy a floating home, and accessory structures or vessels, including the use of the services and facilities of the floating home marina.

Article 2. Rental Agreement

800.20. Unless otherwise provided, the management shall make available to floating homeowners, upon request, copies of all notices required by this article and Article 3 (commencing with Section 800.30).

800.21. The rental agreement shall be in writing and shall contain, in addition to the provisions otherwise required by law to be included, all of the following:

(a) The term of the tenancy and the rent therefor.

(b) The rules and regulations of the floating home marina.

(c) A reference to this chapter and a statement that a copy of it is available from the marina upon request.

(d) A provision specifying that it is the responsibility of the management to provide and maintain physical improvements in the common facilities in good working order and condition.

(e) A description of the physical improvements to be provided the homeowner during his or her tenancy.

(f) A provision listing those services which will be provided at the time the rental agreement is executed and will continue to be offered for the term of tenancy and the fees, if any, to be charged for those services.

(g) All other provisions governing the tenancy.

800.22. The rental agreement may include other provisions permitted by law, but need not include specific language contained in state or local laws not a part of this chapter.

800.23. (a) A homeowner shall be offered a rental agreement for (1) a term of 12 months, (2) a lesser period as mutually agreed upon by both the homeowner and the management, (3) a longer period as mutually agreed upon by both the homeowner and the management, or (4) a longer period as necessary to secure financing from a conventional lending institution.

(b) Rental agreements for a prescribed term shall not contain any terms or conditions with respect to charges for rent, utilities, or incidental reasonable service charges that would be different during the first 12 months of the agreement from the corresponding terms or conditions that would be offered to the homeowner or homeowners on a month-to-month basis.

800.24. No rental agreement for a floating home berth shall contain a provision by which the homeowner waives his or her rights under any of the provisions of this chapter. Any waiver of these rights shall be deemed contrary to public policy and void.

800.25. Membership in any private club or organization which is a condition for tenancy in a floating home marina shall not be denied on the basis of race, color, religion, sex, national origin, ancestry, or marital status.

800.26. On or before March 12, 1991, the management shall notify all floating homeowners, in writing, that a copy of the Floating Home Residency Law is available to them, upon request, from the management.

Article 3. Rules and Regulations

800.30. Each common area facility shall be open or available to residents at all reasonable hours, and the hours of the common area facility shall be posted at the facility.

800.31. A rule or regulation of the floating home marina may be amended at any time with the consent of a homeowner, or without his or her consent upon written notice to him or her of not less than six months. Written notice to a new homeowner, whose tenancy commences within the required period of notice, of a proposed amendment shall constitute compliance with this section where the written notice is given to him or her before the inception of his or her tenancy.

800.32. (a) Except as provided in subdivision (b), and notwithstanding any other provision of law to the contrary, the ownership or management of a floating home marina, cooperative, or condominium for floating homes shall have no right of entry to a floating home without the prior written consent of the resident. This consent may be revoked in writing by the resident at any time. The ownership or management shall have a right of entry into the berth in which a floating home is situated for correction of what management determines to be a hazardous condition at any time, or for maintenance of utilities, docks, and common areas at any reasonable time, but not in a manner or at a time which would interfere with the resident's quiet enjoyment.

(b) The ownership or management of a floating home marina, cooperative, or condominium may enter a floating home without the prior written consent of the resident in case of an emergency or when the resident has abandoned the floating home.

800.33. (a) The management shall give written notice to all homeowners and prospective homeowners concerning the following matters: (1) the nature of the zoning or use permit under which the floating home marina operates, (2) if the floating home marina is operating pursuant to a permit subject to a renewal or expiration date, the relevant information and dates shall be included in the notice, and (3) the duration of any lease of the floating home marina,

or any portion thereof, in which the management is a lessee.

(b) If a change occurs concerning the zoning or use permit under which the floating home marina operates, a change occurs to the lease under which the management is a lessee and that change could affect the homeowner, including the termination of the lease, litigation occurs regarding termination of the lease, or expiration of a use permit occurs, all homeowners shall be given written notice at least 30 days prior to the effective date of the change. Notification regarding the change of use of the floating home marina, or any portion thereof, shall be governed by subdivision (f) of Section 800.71. A prospective homeowner shall be notified prior to the inception of the tenancy.

800.34. The management of a floating home marina shall disclose, in writing, the name and address of the floating home marina owner upon the request of a homeowner.

Article 4. Fees and Charges

800.40. The management shall give a homeowner written notice of any increase in his or her rent at least 30 days before the date of the increase.

800.41. A homeowner shall not be charged a fee for other than rent, utilities, and incidental reasonable charges for services actually rendered.

A homeowner shall not be charged a fee for obtaining a rental agreement on a floating home berth for (1) a term of 12 months, or (2) a lesser period as mutually agreed upon by both the homeowner and the management. A fee may be charged for a rental agreement of more than one year if the fee is mutually agreed upon by both the homeowner and management.

800.42. A homeowner shall not be charged a fee for services actually rendered which are not listed in the rental agreement unless he or she has been given written notice thereof by the management, at least 60 days before imposition of the charge.

800.43. A homeowner shall not be charged a fee for keeping a pet in the floating home marina unless the management actually provides special facilities or services for pets. If special pet facilities are maintained by the management, the fee charged shall reasonably relate to the cost of maintenance of the facilities or services and the number of pets kept in the floating home marina.

800.44. (a) A homeowner shall not be charged a fee for a guest who does not stay with him or her for more than a total of 20 consecutive days or a total of 30 days in a calendar year. Such a guest shall not be required to register with the management.

(b) A homeowner who is living alone and who wishes to share his or her floating home with one person may do so, and a fee shall not be imposed by management for that person. The person shall be considered a guest of the homeowner and any agreement between the homeowner and the person shall not change the terms and

conditions of the rental agreement between management and the homeowner. The guest shall comply with the provisions of the rules and regulations of the floating home marina.

800.45. A homeowner shall not be charged a fee based on the number of members in his or her immediate family. As used in this section, the "immediate family" includes the homeowner and his or her spouse, their parents, and their children.

800.46. A homeowner shall not be charged a fee for the enforcement of any of the rules and regulations of the floating home marina.

800.47. Unless the homeowner specifically requests the service in writing from the management, a homeowner shall not be charged a fee for the entry, installation, hookup, or landscaping as a condition of tenancy except for an actual fee or cost imposed by a local governmental ordinance or requirement directly related to the occupancy of the specific berth where the floating home is located and not incurred as a portion of the development of the floating home marina as a whole. However, reasonable landscaping and maintenance requirements may be included in the floating home marina rules and regulations. The management shall not require a homeowner or prospective homeowner to purchase, rent, or lease goods or services for landscaping from any person, company, or corporation.

800.48. Where the management provides both master meter and submeter service of utilities to a homeowner, for each billing period the cost of the charges for the period shall be separately stated along with the opening and closing readings for his or her meter. The management shall post in a conspicuous place, the prevailing residential utilities rate schedule as published by the serving utility.

800.49. (a) The management may only demand a security deposit on or before initial occupancy and the security deposit may not be in an amount or value in excess of an amount equal to two months' rent that is charged at the inception of the tenancy, in addition to any rent for the first month. In no event shall additional security deposits be demanded of a homeowner following initial occupancy.

(b) After the homeowner has promptly paid to the management within five days of the date the amount is due, all of the rent, utilities, and reasonable service charges for any 12-consecutive-month period subsequent to the collection of the security deposit by the management, or upon resale of the floating home, whichever occurs earlier, the management shall, upon the receipt of a written request from the homeowner, refund to the homeowner the amount of the security deposit within 30 days following the end of the 12-consecutive-month period of prompt payment or the date of the resale of the floating home.

(c) In the event that the interest in the floating home marina is transferred to any other party or entity, the successor in interest shall have the same obligations of management contained in this section

with respect to the security deposit.

(d) The management shall not be required to place any security deposit collected in an interest-bearing account or to provide a homeowner with any interest on the security deposit collected.

(e) This section applies to all security deposits collected on or after January 1, 1991. However, any security deposit collected on other than initial occupancy from a homeowner on or before December 31, 1990, shall be refunded on or before January 31, 1991, or within 12 months of having been collected, whichever is later, providing the original term of the rental agreement has been completed.

800.50. The management shall not acquire a lien or security interest, other than an interest arising by reason of process issued to enforce a judgment of any court, in a floating home located in the floating home marina unless it is mutually agreed upon by both the homeowner and management. Any billing and payment upon the obligation shall be kept separate from current rent.

Article 5. Homeowner Meetings

800.60. The management shall permit meetings by homeowners or residents of a floating home in the marina, or any or all of them, relating to floating home living or social or educational purposes, including forums for or speeches of public officials or candidates for public office, to be held in any community facility if the meeting is held at reasonable hours and when the facility is not otherwise in use. The management's private office is not to be considered a community facility unless so designated by the management.

800.61. The management shall meet and consult with the homeowners, upon written request, within 30 days of the request, either individually, collectively, or with representatives of a group of homeowners who have signed a request to be so represented on the following matters:

(a) Amendments to floating home marina rules and regulations.

(b) Standards for maintenance or physical improvements in the floating home marina.

(c) Addition, alteration, or deletion of services, equipment or physical improvements.

(d) Rental agreements offered pursuant to Article 2 (commencing with Section 800.20).

Any collective meeting shall be conducted only after notice thereof has been given to all the requesting homeowners 10 days or more before the meeting.

Article 6. Termination of Tenancy

800.70. (a) The Legislature finds and declares that, because of the high cost of moving floating homes, the potential for damage resulting therefrom, the requirements relating to the installation of

floating homes, and current government policy limiting the availability of floating home berths, it is necessary that the owners of floating homes within floating home marinas be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.

(b) The management shall not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure, to remove the floating home from the floating home marina within a period of not less than 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner, as defined in Section 18005.8 of the Health and Safety Code, each junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, and the registered owner of the floating home, if other than the homeowner, by United States mail within 10 days after notice to the homeowner, addressed to the legal owner, each junior lienholder, and the registered owner at their addresses, as set forth in the registration card specified in Section 18091.5 of the Health and Safety Code.

800.71. A tenancy shall be terminated by the management only for one or more of the following reasons:

(a) Failure of the homeowner or resident to comply with a local ordinance or state law or regulation relating to floating homes within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency.

(b) Conduct by the homeowner or resident, upon the floating home marina premises, which constitutes a substantial annoyance to other homeowners or residents.

(c) Failure of the homeowner or resident to comply with a reasonable rule or regulation of the floating home marina as set forth in the rental agreement or any amendment thereto. The management may not impose unreasonable restrictions on the right of the homeowner to sublet his or her floating home.

No act or omission of the homeowner or resident shall constitute a failure to comply with a reasonable rule or regulation unless and until the management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner or resident has failed to adhere to the rule or regulation within seven days. However, if a homeowner has been given a written notice of an alleged violation of the same rule or regulation on three or more occasions within a 12-month period after the homeowner or resident has violated that rule or regulation, no written notice shall be required for a subsequent violation of the same rule or regulation.

Nothing in this subdivision shall relieve the management from its obligation to demonstrate that a rule or regulation has in fact been violated.

(d) (1) Nonpayment of rent, utility charges, or reasonable incidental service charges; if the amount due has been unpaid for a period of at least five days from its due date, and provided, that the

homeowner shall be given a three-day written notice subsequent to that five-day period to pay the amount due or to vacate the tenancy. The three-day written notice shall be given to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure. The notice may be given at the same time as the 60 days' notice required for termination of the tenancy.

Payment by the homeowner prior to the expiration of the three-day notice period shall cure a default under this subdivision.

(2) However, if a homeowner has been given a three-day notice to pay the amount due or to vacate the tenancy on three or more occasions within the preceding 12-month period, no written three-day notice shall be required for a subsequent nonpayment of rent, utility charges, or reasonable incidental service charges.

(3) Payment by the legal owner, any junior lienholder, or the registered owner, if other than the homeowner, on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner, each junior lienholder, and the registered owner provided in subdivision (b) of Section 800.70, shall cure a default under this subdivision with respect to that payment.

(4) The homeowner shall remain liable for all payments due up until the time the tenancy is vacated.

(5) Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner, any junior lienholder, or the registered owner, if other than the homeowner, as provided by this subdivision, may not be exercised more than twice during a 12-month period.

(e) Condemnation of the floating home marina.

(f) Change of use of the floating home marina or any portion thereof, provided:

(1) The management gives the homeowners at least 60 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the floating home marina.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written notice thereof prior to the inception of his or her tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been granted.

(4) The notice requirements for termination of tenancy set forth

in this section and Section 800.72 shall be followed if the proposed change actually occurs.

(5) The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

800.72. The management shall set forth in a notice of termination the reason relied upon for the termination with specific facts to permit determination of the date, place, witnesses, and circumstances concerning that reason. Neither reference to the section number or a subdivision thereof nor a recital of the language of this article constitutes compliance with this section.

800.73. No tenancy shall be terminated for the purpose of making a homeowner's berth available for a person who purchases a floating home from the owner of the floating home marina or his or her agent.

800.74. A homeowner shall give written notice to the management of not less than 60 days before vacating his or her tenancy.

800.75. The provisions of this article shall not affect any rights or proceedings set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure except as otherwise provided in those sections.

Article 7. Transfer of a Floating Home

800.80. A homeowner or his or her agent may advertise the sale or exchange of his or her floating home, or, if not prohibited by the terms of an agreement with the management, may advertise the rental of his or her floating home, by displaying a sign in the window of the floating home, or by a sign posted on the side of the floating home facing the dock or water or both, stating that the floating home is for sale or exchange or, if not prohibited, for rent by the owner of the floating home or his or her agent. The sign shall state the name, address, and telephone number of the owner of the floating home or his or her agent and may be at least 24 inches in width and 18 inches in height.

800.82. (a) The management shall not show or list for sale a floating home without first obtaining the owner's written authorization. The authorization shall specify the terms and conditions regarding the showing or listing.

(b) The management shall prohibit neither the listing nor the sale of a floating home within the floating home marina by the homeowner, or an agent of the homeowner to authorize the management to act as the agent in the sale of a floating home as a condition of management's approval of buyer or prospective homeowner for residency in the floating home marina.

800.83. (a) The management shall not charge a homeowner, or his or her agent a transfer or selling fee as a condition of a sale of his or her floating home within a floating home marina unless the

management performs a service in the sale. The management shall not perform any such service in connection with the sale unless so requested in writing, by the homeowner or his or her agent.

(b) The management shall not charge a prospective homeowner or his or her agent, upon purchase of a floating home, a fee as a condition of approval for residency in a floating home marina unless the management performs a specific service in the sale. The management shall not impose a fee, other than for a credit check in accordance with subdivision (b) of Section 800.85, for an interview of a prospective homeowner.

800.84. The management shall not require the removal of a floating home from the floating home marina in the event of its sale to a third party during the term of the homeowner's rental agreement.

800.85. (a) The management may require the right of prior approval of a purchaser of a floating home that will remain in the floating home marina and that the selling homeowner or his or her agent give notice of the sale to the management before the close of the sale. Approval cannot be withheld if the purchaser has the financial ability to pay the rent and charges of the floating home marina unless the management reasonably determines that, based on the purchaser's prior tenancies, he or she will not comply with the rules and regulations of the floating home marina. In determining whether the purchaser has the financial ability to pay the rent and charges of the floating home marina, the management shall not require the purchaser to submit copies of any personal income tax returns in order to obtain approval for residency in the floating home marina. However, management may require the purchaser to document the amount and source of his or her gross monthly income or means of financial support. If the ownership or management rejects a purchaser as a prospective homeowner, the ownership or management shall inform the selling homeowner in writing of its reasons for the rejection. If the approval of a purchaser is withheld for any reason other than those stated in this article, the management or owner may be held liable for all damages proximately resulting therefrom.

(b) If the management collects a fee or charge from a prospective purchaser of a floating home in order to obtain a financial report or credit rating, the full amount of the fee or charge shall be credited toward payment of the first month's rent for that floating home purchaser. If, for whatever reason, the prospective purchaser is rejected by the management, the management shall refund to the prospective purchaser the full amount of that fee or charge within 30 days from the date of rejection. If the prospective purchaser is approved by the management, but, for whatever reason, the prospective purchaser elects not to purchase the floating home, the management may retain the fee, or a portion thereof, to defray its administrative costs under this section.

800.86. (a) An escrow, sale, or transfer agreement involving a

floating home located in the floating home marina at the time of sale, where the floating home is to remain in the floating home marina, shall contain a provision signed by the purchaser stating that by his or her signature he or she has agreed to the terms of a rental agreement. A copy of a fully executed rental agreement signed by both the purchaser and floating home marina management will satisfy the requirements of this section.

(b) In the event the purchaser fails to execute the rental agreement, the purchaser shall not have any rights of tenancy.

(c) In the event that an occupant of a floating home has no rights of tenancy and is not otherwise entitled to occupy the floating home pursuant to this chapter, the occupant shall be considered an unlawful occupant if, after a demand is made for the surrender of the floating home marina berth, for a period of five days, the occupant has refused to surrender the berth to the floating home marina management. In the event the unlawful occupant fails to comply with the demand, the unlawful occupant shall be subject to the proceedings set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure.

(d) The occupant of the floating home shall not be considered an unlawful occupant and shall not be subject to the provisions of subdivision (c) if all of the following conditions exist:

(1) The occupant is the registered owner of the floating home.

(2) The management has determined that the occupant has the financial ability to pay the rent and charges of the floating home marina, will comply with the rules and regulations of the floating home marina, based on the occupant's prior tenancies, and will comply with this article.

(3) The management failed or refused to offer the occupant a rental agreement.

800.87. No rental or sale agreement shall contain a provision by which the purchaser or homeowner waives his or her rights under this article. Any waiver thereof shall be deemed contrary to public policy and shall be void and unenforceable.

800.88. (a) An heir or joint tenant who gains ownership of a floating home in the floating home marina through the death of the owner of the floating home who is a homeowner shall have the right to sell the floating home to a third party in accordance with of this article, but only if all the homeowner's responsibilities and liabilities to the management regarding rent, utilities, and reasonable maintenance of the floating home and its premises which have arisen after the transfer of ownership to the heir or joint tenant have been satisfied up until the date the floating home is resold.

800.89. Any legal owner or junior lienholder who forecloses on his or her security interest in a floating home located in a floating home marina shall have the right to sell the floating home within the floating home marina to a third party in accordance with the provisions of this article, but only if all the homeowner's responsibilities and liabilities to the management regarding rent,

utilities, and reasonable maintenance of a floating home and it's premises are satisfied by the foreclosing creditor through the date the floating home is resold.

800.90. The management (1) shall not prohibit the listing or sale of a used floating home within the floating home marina by the homeowner, or an agent of the homeowner other than the management, (2) nor require the selling homeowner to authorize the management to act as the agent in the sale of a floating home as a condition of approval of the buyer or prospective homeowner for residency in the floating home marina.

800.91. (a) No action based upon the management's alleged failure to maintain the physical improvements in the common facilities in good working order or condition or alleged reduction of service may be commenced by a homeowner unless the management has been given at least 30 days' prior notice of the intention to commence the action.

(b) The notice shall be in writing, signed by the homeowner or homeowners making the allegations, and shall notify the management of the basis of the claim, the specific allegations, and the remedies requested. A notice by one homeowner shall be deemed to be sufficient notice of the specific allegation to the management of the floating home marina by all of the homeowners in the floating home marina.

(c) The notice may be served in the manner prescribed in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure.

(d) For purposes of this section, management shall be deemed to be notified of an alleged failure to maintain the physical improvements in the common facilities in good working order or condition or of an alleged reduction of services upon substantial compliance by the homeowner or homeowners with the provisions of subdivisions (b) and (c), or when management has been notified of the alleged failure to maintain or the alleged reduction of services by a state or local agency.

(e) If the notice is served within 30 days of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 30 days from the service of the notice.

(f) This section does not apply to actions for personal injury or wrongful death.

Article 8. Transfer of a Floating Home Marina

800.100. (a) When the owner of a floating home marina enters into a written listing agreement with a licensed real estate broker, as defined in Article 1 (commencing with Section 10130) of Chapter 2 of Part 1 of Division 4 of the Business and Professions Code, for the sale of the marina or offers to sell the marina to any party, the owner shall provide written notice by first-class mail or by personal delivery to the president, secretary, and treasurer of the resident

organization, not less than 30 days but no more than one year prior to entering into any written listing agreement for the sale of the marina, or making any offer to sell the marina to any party. An offer to sell a marina shall not be construed as an offer under this subdivision unless it is initiated by the park owner or his or her agent.

(b) An owner of a floating home marina is not required to comply with subdivision (a) unless the following conditions are met:

(1) The resident organization has first furnished the park owner or park manager a written notice of the name and address of the president, secretary, and treasurer of the resident organization to whom the notice of sale shall be given.

(2) The resident organization has first notified the marina owner or manager in writing that the park residents are interested in purchasing the marina. The initial notice by the resident organization shall be made prior to a written listing or offer to sell the marina by the marina owner, and the resident organization shall give subsequent notice once each year thereafter that the marina residents are interested in purchasing the marina.

(3) The resident organization has furnished the marina owner or marina manager a written notice, within five days, of any change in the name or address of the officers of the resident organization to whom the notice of sale shall be given.

(c) Nothing in this section affects the validity of title to real property transferred in violation of this section, although a violation shall subject the seller to civil action pursuant to Article 9 (commencing with Section 800.200) by homeowner residents of the park or by the resident organization.

(d) Nothing in this section affects the ability of a licensed real estate broker to collect a commission pursuant to an executed contract between the broker and the floating home marina owner.

(e) This section does not apply to any of the following:

(1) Any sale or other transfer by a marina owner who is a natural person to any relation specified in Section 6401 or 6402 of the Probate Code.

(2) Any transfer by gift, devise, or operation of law.

(3) Any transfer by a corporation to an affiliate. As used in this paragraph, "affiliate" means any shareholder of the transferring corporation, any corporation or entity owner or controlled, directly or indirectly, by the transferring corporation, or any other corporation or entity controlled, directly or indirectly, by any shareholder of the transferring corporation.

(4) Any transfer by a partnership to any of its partners.

(5) Any conveyance resulting from the judicial or nonjudicial foreclosure of a mortgage or deed of trust encumbering a floating home marina or any deed given in lieu of such a foreclosure.

(6) Any sale or transfer between or among joint tenants or tenants in common owning a floating home marina.

(7) The purchase of a floating home marina by a governmental entity under its powers of eminent domain.

Article 9. Actions, Proceedings, and Penalties

800.200. In any action arising out of the provisions of this chapter the prevailing party shall be entitled to reasonable attorney's fees and costs. A party shall be deemed a prevailing party for the purposes of this section if the judgment is rendered in his or her favor or where the litigation is dismissed in his or her favor prior to or during the trial, unless the parties otherwise agree in the settlement or compromise.

In the event a homeowner or former homeowner of a floating home marina is the prevailing party in a civil action against the management to enforce his or her rights under the provisions of this chapter, the homeowner, in addition to damages afforded by law, may, in the discretion of the court, be awarded an amount not to exceed five hundred dollars ($500) for each willful violation of those provisions by the management.

800.201. (a) The substantial failure of the management to provide and maintain physical improvements in the common facilities in good working order and condition shall be deemed a public nuisance. Notwithstanding the provisions of Section 3491, such a nuisance only may be remedied by a civil action or abatement.

(b) The substantial violation of a floating home marina rule shall be deemed a public nuisance. Notwithstanding the provisions of Section 3491, such a nuisance only may be remedied by a civil action or abatement.

Article 10. Cooperatives and Condominiums

800.300. As used in this article:

(a) "Ownership or management" means the ownership or management of a cooperative or condominium for floating homes.

(b) "Resident" means a person who maintains a residence in a cooperative or condominium for floating homes.

800.301. A resident may advertise the sale or exchange of his or her floating home or, if not prohibited by the terms of an agreement with the management or ownership, may advertise the rental of his or her floating home by displaying a sign in the window of his or her floating home stating that the floating home is for sale or exchange or, if not prohibited, for rent by the owner of the floating home or his or her agent. The sign shall state the name, address, and telephone number of the owner of the floating home or his or her agent, and may be at least 12 inches in width and 12 inches in length.

800.302. The ownership or management shall not show or list for sale a floating home owned by a resident without first obtaining the resident's written authorization. The authorization shall specify the terms and conditions regarding the showing or listing.

Nothing contained in this section shall be construed to affect the provisions of the Health and Safety Code governing the licensing of floating home salespersons or dealers.

800.303. The ownership or management shall not require the removal of a floating home from a cooperative or condominium in the event of its sale to a third party.

800.304. The ownership or management may require the right to prior approval of the purchaser of a floating home that will remain in the cooperative or condominium for floating homes and that the selling resident or his or her agent give notice of the sale to the ownership or management before the close of the sale. Approval cannot be withheld if the purchaser has the financial ability to pay the fees and charges of the cooperative or condominium unless the ownership or management reasonably determines that, based on the purchaser's prior residences, he or she will not comply with the rules and regulations of the cooperative or condominium.

800.305. No agreement shall contain any provision by which the purchaser waives his or her rights under this article. Any waiver thereof shall be deemed contrary to public policy and void and unenforceable.

800.306. This chapter applies only to the relationship between the management and the homeowners and residents of floating home marinas. Nothing in this chapter affects residential use of tide and submerged lands, including the public trust doctrine or any legislative grant of tide and submerged lands to a public entity, or the administration of these lands by the State Lands Commission or a legislative grantee. In addition, this chapter does not supplant, lessen, modify, or otherwise affect past or future regulation of floating homes or floating home marinas by the San Francisco Bay Conservation and Development Commission pursuant to the McAteer-Petris Act.

CHAPTER 1506

An act to add Chapter 31 (commencing with Section 7595) to Division 7 of Title 1 of the Government Code, relating to state government.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Chapter 31 (commencing with Section 7595) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 31. PUBLIC OFFICES HOURS

7595. All state agencies which provide over-the-counter information and services directly to the public shall provide those services during the customary lunch hours of 11:30 a.m. to 1:30 p.m.

on those days that the offices are open to the public. This section shall not apply to any state office which has three or less full-time employees who are not peace officers at an office on any single day.

CHAPTER 1507

An act to add Chapter 3.6 (commencing with Section 7160) to Part 1 of Division 7 of the Health and Safety Code, relating to organ and tissue transplants.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) There is no more priceless gift than a life-saving organ. In addition to prolonging the life of a human being, the donation of an organ can help a family find a sense of solace in the tragic loss of a loved one.

(b) Organ transplantation is one of the more remarkable achievements of modern science and is undergoing radically improved changes as a result of new developments in medical diagnosis and treatment.

(c) As the success rate of donor operations and the number of potential donor recipients have increased, so has the need for organs and severe shortages have resulted.

(d) Nationally, over 20,000 persons are in need of organ transplants. In California, approximately 2,000 people await donations of organs, such as hearts, kidneys, or livers.

(e) There is no mechanism in place to evaluate the success of current donor programs. The State of California mails over one million donor-consent cards each year with Department of Motor Vehicle license-renewal forms, but has no followup system to track the use of the cards. There are no statistics available to indicate hospital compliance with current requirements to approach family members concerning organ donations at or near the time of death.

(f) The absence of a coordinated effective public information program has forced most patients and their families to resort to public appeals through the mass media in order to obtain the organs needed for a transplant.

SEC. 2. Chapter 3.6 (commencing with Section 7160) is added to Part 1 of Division 7 of the Health and Safety Code, to read:

CHAPTER 3.6. ORGAN TRANSPLANTS

7160. (a) The State Department of Health Services shall consult with the Legislature on or before December 31, 1991, to evaluate and make recommendations to improve the effectiveness of organ transplantation for the general public and in minority communities and low-income communities in California.

Data to be considered may include, but not be limited to:

(1) The number of persons waiting for organ transplants.

(2) The number of available organ donors.

(3) The number of hospitals performing transplants and type of transplants.

(4) The percentage of medically insured transplant recipients.

(5) The percentage of Medi-Cal funded transplant recipients.

(6) The waiting time for transplantation.

(7) Factors used to determine eligibility for organ transplantation.

(8) Referral rates of patients to transplant centers.

(9) The number of persons accepted by transplant centers.

(10) The cost of recovery, processing, and distribution of the donated organs.

(11) The cost of transplantation operations.

(12) The financial impact of an organ donation upon the donor and the donor's family.

(13) Survival rates of patients receiving organ transplants.

(14) Hospital compliance with Section 7184.

(b) In compiling data, the department may utilize various sources, including, but not limited to, the local organ procurement organizations, the United Network for Organ Sharing, and the Association of Organ Procurement Organizations.

CHAPTER 1508

An act to amend Section 682 of, and to repeal Section 700.5 of, the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 682 of the Welfare and Institutions Code is amended to read:

682. (a) To continue any hearing relating to proceedings pursuant to Section 601 or 602 beyond the time limit within which the hearing is otherwise required to be heard, a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing good cause

for the continuance.

(b) A continuance shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the moving party at the hearing on the motion. Neither stipulation of the parties nor convenience of the parties is, in and of itself, good cause. Whenever any continuance is granted, the facts which require the continuance shall be entered into the minutes.

(c) Notwithstanding subdivision (a), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for failure to comply with those requirements, the court shall deny the motion.

(d) In any case in which the minor is represented by counsel and no objection is made to an order continuing any such hearing beyond the time limit within which the hearing is otherwise required to be held, the absence of such an objection shall be deemed a consent to the continuance.

SEC. 2. Section 700.5 of the Welfare and Institutions Code is repealed.

CHAPTER 1509

An act to amend Sections 50668.5 and 50714 of the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 50668.5 of the Health and Safety Code is amended to read:

50668.5. For the purpose of providing financial assistance pursuant to this chapter utilizing bond proceeds transferred to the Housing Rehabilitation Loan Fund pursuant to paragraph (2) of subdivision (a) of Section 53130 and paragraph (2) of subdivision (b) of Section 53130 and Sections 8878.20 and 8878.21 of the Government Code, deferred payment loans made with these funds shall be subject to all of the following special provisions, which shall prevail over conflicting provisions of this chapter:

(a) (1) Applications for fund commitments shall be accepted by the department at any time. Fund commitments shall be based on a ranking of applications, which shall occur at least once every three months until there are insufficient funds available to commit according to this ranking. In making this ranking for rental housing developments, priority shall be given to those projects which (A) serve the greater number of eligible households as defined in Section

50105 with the lowest incomes, (B) provide the greater number of units with three or more bedrooms, (C) are located in areas where the housing need is great as determined by the department, taking into consideration, among other factors, low vacancy rates, high market rents, long waiting lists for subsidized housing, the stock of substandard housing, and the potential loss of subsidized rental housing to market-rate housing through demolition, foreclosure, or subsidy termination, (D) complement the implementation of an existing housing program, (E) maximize private local and other funding sources, and (F) maximize long-term benefits for eligible households, as defined in Sections 50079.5 and 50105. Subparagraph (B) above shall not apply to applications for fund commitments submitted pursuant to Section 50670 or to any application for residential hotels and motels. In making this ranking for owner-occupied housing, priority shall be given to those applications which (A) serve the greater number of eligible households, as defined in Section 50105, with the lowest income, (B) provide the greater number of units with three or more bedrooms, (C) are located in areas where the need for rehabilitation is great as determined by the department, taking into consideration, among other factors, the amount of substandard owner-occupied housing, low vacancy rates, and limited availability of affordable housing, (D) complement the implementation of an existing housing program, and (E) maximize available and appropriate private, local, and other funding sources. The department shall also evaluate the capability of the sponsor to rehabilitate, own, and manage the rental housing development or the capability of the applicant for funding for owner-occupied housing to implement the proposed program.

(2) Loans for rental housing developments may be reviewed, approved, and funded by the department directly to the sponsor. In these cases, the department shall ensure that the sponsor notifies the local legislative body of the sponsor's loan application prior to a funding award. Loans to owner-occupants may be made by local public entities or nonprofit corporations which have received fund commitments from the department. The department shall ensure that the local public entity or nonprofit corporation applying for fund commitments for loans to owner-occupants notifies the local legislative body of the application prior to a funding award. When the department certifies a local public entity or nonprofit corporation as being capable of making these loans, the department shall delegate responsibility for reviewing and approving these loans to the local public entity or nonprofit corporation. If it is determined by the department that the local public entity or nonprofit corporation is no longer capable of making or managing these loans, the department may, at its sole discretion, revoke that delegation of responsibility or cancel the funding commitment to the local public entity or nonprofit corporation, or both. The department's regulations shall include procedures and standards for certification and decertification.

(3) A sponsor may apply for loans for one or more rental housing developments.

(b) (1) A housing development may utilize any combination of federal, state, local, and private financial resources necessary to make the development affordable, for the term of the state's regulatory agreement, to the eligible households. Notwithstanding the requirements of Section 50663, rental housing developments and owner-occupied units assisted by the program may be located anywhere in the state.

(2) In the case of nonprofit sponsors, loans for rental housing developments, when combined with other indebtedness against the property shall not exceed 100 percent of the after-rehabilitation value of the property, as determined by an appraisal of the property conducted pursuant to guidelines established in regulations of the department.

(3) The maximum loan amounts per unit established in regulations pursuant to Section 50670 shall also apply to rental housing developments rehabilitated or acquired and rehabilitated pursuant to paragraph (1) of subdivision (a) of Section 50661, except that there shall not be a maximum loan amount established per project. These dollar limitations may be increased by the department, as necessary, in high-cost areas of the state or where the correction of severe health and safety defects or the provisions of handicapped accessibility standards necessitate greater assistance. The department, by regulation, may specify unit loan limits for loans made for owner-occupied housing and the circumstances under which it may grant exceptions to, or variances from, these limits.

(4) (A) Loans made to sponsors of rental housing developments for acquisition and rehabilitation shall be for terms of not less than 30 years. Loans made to sponsors of rental housing developments for rehabilitation only shall be for terms of not less than 20 years. However, the term shall not exceed the useful life of the rental housing development for which the loan is made. The sponsor may elect to begin to repay the loan at any time in accordance with the prepayment plan established in accordance with paragraph (6), if it is determined by the department, that the sponsors can continue to maintain the rents at levels affordable to eligible households.

(B) The term of the loan and the time for repayment may be extended by the department for additional 10-year terms as long as the rental housing development is operated in a manner consistent with the regulatory agreement and the sponsor requires an extension in order to continue to operate in a manner consistent with this chapter.

(5) (A) In the case of loans made for rental housing developments, eligible costs shall include those costs relating to (i) real property acquisition, including refinancing of existing debt to the extent necessary to reduce debt service to a level consistent with the provision of affordable rents and the fiscal integrity of the project; (ii) rehabilitation or reconstruction, including the

conversion of nonresidential structures to residential use; (iii) general property improvements which are necessary to correct unsafe, unhealthy, or unsanitary conditions, including renovations and remodeling, including, but not limited to, remodeling of kitchens and bathrooms, installation of new appliances, landscaping, and purchase or installation of central air conditioning; (iv) necessary and related onsite improvements; (v) reasonable administrative expenses in connection with the planning and execution of the project, as determined by the department; (vi) reasonable consulting costs; (vii) rent-up costs; (viii) seismic rehabilitation improvements; and (ix) any other costs of rehabilitation authorized by the department. "Rent-up costs," as used in this section, means costs incurred while a unit is on the housing market but not rented to its first tenant. "Seismic rehabilitation improvements," as used in this section, means improvements which are designed to increase seismic structural safety in accordance with a plan developed by a civil engineer, a structural engineer, or an architect for a particular building that has been identified as hazardous by the city or county in which the building is located in accordance with the criteria established by the Seismic Safety Commission pursuant to Section 8875.1 of the Government Code or in accordance with a previously adopted city or county seismic safety ordinance adopted pursuant to Section 19163.

(B) In the case of loans made for owner-occupied housing, eligible costs shall include those costs relating to (i) rehabilitation work expenses; (ii) cost of room additions necessary to alleviate overcrowding; (iii) costs of general property improvements including renovations and remodeling, including, but not limited to, remodeling of kitchens and bathrooms, installation of new appliances, landscaping and purchase or installation of central air conditioning, to the extent that they are necessary to correct unsafe, unhealthy, or unsanitary conditions; (iv) costs related to necessary architectural, engineering, and other technical consultants; (v) costs of preliminary reports, title policies, credit reports, appraisal reports, and fees for recording documents related to the department's loans; (vi) costs of building permits and other government fees; and (vii) if in conjunction with other rehabilitation work, costs for improvements related to making the housing accessible to the handicapped.

(C) Notwithstanding the provisions of Section 53130 which limit the use of allocated proceeds with respect to project operating costs, and Sections 53131 and 53133, the department may set aside or use any amounts available in the fund to establish a rental housing development default reserve for the purpose of curing or avoiding a sponsor's defaults on the terms of any loan or other obligation which jeopardizes the financial integrity of a rental housing development or the department's security in the rental housing development. The payment or advance of funds by the department

pursuant to this subparagraph shall be solely within the discretion of the department and no sponsor shall be entitled to or have any right to payment of these funds. Funds advanced pursuant to this subparagraph shall be added to the loan amount secured by the deed of trust and shall be payable to the department upon demand.

(D) Notwithstanding the provisions of Section 53130 which limit the use of allocated proceeds with respect to project operating cost, or Sections 53131 and 53133, the department may set aside or use proceeds in the fund in an amount not to exceed 3 percent of the amount of encumbrances for loans for owner-occupied housing to establish an owner-occupied housing default reserve for the purpose of curing or avoiding an owner's default on the terms of any loan or other obligation which jeopardizes the department's security in the owner-occupied housing. The payment or advance of funds by the department pursuant to this subparagraph shall be solely within the discretion of the department, and no homeowner shall be entitled to, or have any right to payment of, these funds. Funds advanced pursuant to this subparagraph shall be added to the loan amount secured by the deed of trust and shall be payable to the department upon demand. Interest payments from loans for owner-occupied housing shall be allocated by the department into this reserve to replace the allocated proceeds until the percent established by the department is achieved solely with interest payments.

(6) Upon request of the sponsor, the department may permit repayment of a sponsor's loan on the basis of net cash flow. The department shall develop a prepayment plan in conjunction with the sponsor which will ensure the maintenance of affordable rents and the fiscal integrity of the rental housing development. As an incentive to encourage the prepayment of loans, the department may permit the sponsor to retain one-half of the net cash flow. The department shall determine the method for calculating net cash flow, which may include a factor for excess debt service coverage or a return on cash investment to the sponsor.

(7) If a loan is made pursuant to this chapter for both seismic rehabilitation improvements and other eligible rehabilitation costs, only those costs related to the seismic rehabilitation improvements shall be counted and included for purposes of the fund reservation made by Section 8878.20 of the Government Code.

(c) Principal and accumulated interest is due and payable upon completion of the term of the loan.

(1) "Maintain affordable rent levels," as used in this section, means rents may be automatically increased by the sponsor on an annual basis pursuant to an inflation index to be determined by the department. The inflation index shall reflect anticipated annual changes in rental housing development operating costs from a base year when the rents are initially established. Any sponsor may appeal to the department for a greater adjustment in rents necessary to ensure the fiscal integrity of the rental housing development. If the department does not respond within 60 days, the request shall be

deemed approved. A 30-day written notice shall be given to each eligible household prior to an adjustment in the amount of rent.

(2) Upon prior written approval by the department, a sponsor may set income limits for incoming tenants at a level below the limit specified in Section 50079.5. If a tenant's income exceeds this income limit established by the sponsor, but does not exceed the limit specified in Section 50079.5, that fact alone shall neither constitute cause for the tenant's eviction, nor be a violation of the sponsor's loan agreement. If a tenant's income exceeds the income limit for a household specified in Section 50079.5, the tenant shall be required to vacate the assisted unit within six months from the date of income recertification or notice to the sponsor of an increase in income over the permissible income level. That period may be extended by the sponsor for an additional six-month period in high cost rental areas with low vacancy rates, as determined by the department. Any vacant units shall be rented to eligible households until the required residency by eligible households is attained.

In the case of limited equity housing cooperatives, the provisions of this paragraph shall apply, except that tenants whose incomes, upon recertification, exceed the limit specified in Section 50079.5 shall not be required to vacate their units. Instead, and upon six months' notice, these tenants shall be required to pay rent in an amount equal to the market rate rent for comparable units, as determined by the department. When a tenant's income exceeds the limit specified in Section 50079.5, the next available membership share for occupancy in a comparable unit shall be sold to a household with an income at or below this limit.

(3) When operating income as defined by the department is greater than operating expenses, debt service, deposits required for reserve accounts, payments pursuant to paragraph (6) of subdivision (b) if elected by the sponsor, approved annual distributions, and any other disbursements approved by the department, these excess funds shall be paid into an account established in the fund. Funds in this account shall be appropriated to the department for use to assist rental housing developments funded pursuant to this section with proceeds of bonds issued pursuant to Chapter 27 of the Statutes of 1988, Chapter 30 of the Statutes of 1988, or Chapter 48 of the Statutes of 1988, subject to the following requirements:

(i) Excess funds in the account shall be allocated first into the rental housing development default reserve established pursuant to subparagraph (C) of paragraph (5) of subdivision (b). The balance of this default reserve shall not exceed the maximum level of funding established by regulations adopted by the department.

(ii) After the rental housing development default reserve is fully funded with these excess funds, the department shall use all additional excess funds in the account for payment of either unforeseen capital improvements, the cost of which would jeopardize the fiscal integrity and affordability of a rental housing development, or to further reduce rents in a rental housing

development. The department may adopt regulations which specify the procedures and standards for application for, and use of, these funds. Those payments used for capital improvements shall be added to the loan amount secured by the deed of trust and shall be payable to the department upon demand.

(d) Prior to disbursement of any funds for loans to rental housing developments made pursuant to this section, the department shall enter into a regulatory agreement with the sponsor in accordance with subdivision (d) of Section 50670, except that (1) the term of the regulatory agreement shall be for the original term of the loan and the agreement shall be binding upon the sponsor and successors in interest upon sale or transfer of the rental housing development or prepayment of the loan and (2) a nonprofit sponsor, other than a governmental agency, may maintain a debt service coverage ratio of 115 percent and distribute earnings in an amount no greater than 8 percent of the nonprofit sponsor's actual investment. The regulatory agreement also shall contain provisions requiring annual inspections and review of year-end fiscal audits and related reports by the department and provisions to maintain affordable rent levels to serve eligible households.

(e) Where loans will be used in conjunction with federal or other housing assistance or tax credits and a conflict exists between the other state or federal program requirements and those of this chapter with respect to the calculation of rents, the requirements of the Deferred Payment Rehabilitation Loan Program and the Special User Housing Rehabilitation Program may be waived only to the extent necessary to permit federal or other state financial participation or eligibility for tax credits.

(f) "Sponsor," for purposes of this section, has the same meaning as defined in subdivision (c) of Section 50669.

(g) The department shall adopt emergency regulations to implement this chapter and to amend the maximum loan amounts per unit established in regulations adopted pursuant to Section 50670, with respect to loans made with funding subject to this section. The regulations shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning or purposes of Section 11346.1 of the Government Code.

Notwithstanding conflicting provisions of this chapter, the department may elect to make these regulations additionally applicable until December 31, 1992, to all other deferred payment loan programs authorized by this chapter, except the programs specified in Sections 50662.5 and 50671, if the department determines that the uniformity achieved thereby will avoid significant additional administrative costs.

(h) For purposes of this section, "rental housing development" means a single family house or a multifamily structure or structures containing two or more dwelling units, including efficiency units. One or more of the dwelling units in a rental housing development

shall be rented or leased or otherwise occupied as a primary residence by a person or household who is not the owner of the structure or structures. For the purposes of this section, motels operated pursuant to subdivision (b) of Section 50669, residential hotels, group or congregate homes, and limited equity housing cooperatives are rental housing developments. Except for motels, the limitations concerning types of residents and minimum number of units set forth in subdivision (b) of Section 50669 shall not apply.

(i) "Affordable rent" for the purposes of this section shall be established by the department in the regulations authorized by subdivision (g). However, the initial rents shall be established by the department based on a designated family size for each unit size, and those initial rents shall not exceed 30 percent of 50 percent of the area median income adjusted by that designated family size for units restricted to occupancy by very low income households; or 30 percent of 60 percent of area median income adjusted by that designated family size for units restricted to occupancy by low-income households. In establishing affordable rent levels, the department shall make provision in its regulations for projects serving the physically and mentally handicapped persons.

SEC. 2. Section 50714 of the Health and Safety Code is amended to read:

50714. (a) The San Diego County Farmworker Housing Account is hereby established, to be administered by the Department of Housing and Community Development, through its Office of Migrant Services pursuant to the authority granted in Sections 50406 and 50710, to assist in the financing, development, and operation of up to 500 family housing units for year-round use by migrant or nonmigrant farm labor employees and their families. The sponsor shall seek federal, state, and local financial and in-kind assistance in the development of this housing, but the lack of that assistance shall not be a prerequisite for obtaining financing under this section for the development and operation of family housing units.

(b) The department shall ensure that the housing is operated on the same basis as other state-financed housing assisted pursuant to this chapter, except that there shall be no limitation set on the term of tenancy if the project is operated for nonmigrant farmworkers.

(c) The department shall award funds pursuant to this section to project sponsors who demonstrate that they are capable of effectively serving the housing needs of migrant or other farmworkers in San Diego County. The year-round use required by subdivision (a) for migrant centers may be interrupted as necessary to close the housing for maintenance purposes and to allow new migrant farmworker families to obtain housing. The project sponsor shall also demonstrate his or her capability of ensuring the project's fiscal integrity and maintaining the project in a decent, safe, and sanitary manner for at least 25 years.

(d) The department shall use funds appropriated by the Legislature for purposes of this section. The appropriated funds may

be used for the costs permitted by, or pursuant to, subdivisions (b) to (e), inclusive, of Section 50712.5. For purposes of soliciting and awarding funds pursuant to this section, the department is not required to promulgate regulations.

(e) To be eligible for funding, a project sponsor shall make a contribution to the housing assisted under this section. However, if the housing sponsor can demonstrate that it does not have the capability to make that contribution, no contribution shall be required. A contribution, for purposes of this subdivision, may be in the form of a writedown of land costs, fee waiver, direct equivalent financial contribution, or any other incentives of financial value.

(f) The department shall accept proposals from project sponsors commencing November 15, 1989, and until all funds reappropriated for the purpose of this section are awarded. The department shall award grants to project sponsors commencing September 1, 1990.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Because existing law allows the Department of Housing and Community Development to administer housing rehabilitation programs funded with nonbond funds in conformity with the requirements of the programs financed with bond proceeds authorized by Propositions 77 and 84 only until July 1, 1990, it is, therefore, necessary that this act take immediate effect.

CHAPTER 1510

An act to amend Sections 8680.4, 8685, and 8690.4 of the Government Code, relating to natural disaster assistance, and making an appropriation therefor.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 8680.4 of the Government Code is amended to read:

8680.4. "Project" means the repair or restoration, or both, other than normal maintenance, or the replacement of, real property of a local agency used for essential governmental services, including, but not limited to, buildings, levees, flood control works, channels, irrigation works, city streets, county roads, bridges, and other public works, that are damaged or destroyed by a natural disaster. "Project" also includes those activities and expenses allowed under subdivisions (a), (c), (d), and (e) of Section 8685. Except as provided in Section 8686.3, the completion of all or part of a project prior to

application for funds pursuant to this chapter shall not disqualify the project or any part thereof.

SEC. 2. Section 8685 of the Government Code, is amended to read:

8685. From any money appropriated for that purpose, and subject to the conditions specified in this article, the Director of Emergency Services shall allocate funds to meet the cost of any one or more projects as defined in Section 8680.4. Applications by school districts shall be submitted to the Superintendent of Public Instruction for review and approval, in accordance with instructions or regulations developed by the Office of Emergency Services, prior to the allocation of funds by the Director of Emergency Services.

Moneys appropriated for the purposes of this chapter may be used to provide financial assistance for the following local agency and state costs:

(a) Local agency personnel regular hourly wage and overtime costs, equipment costs, and the cost of supplies and materials used during disaster response activities, incurred as a result of a state of emergency proclaimed by the Governor, excluding the normal hourly wage costs of regularly assigned emergency services and public safety personnel.

(b) To repair, restore, reconstruct, or replace facilities belonging to local agencies damaged as a result of natural disasters as defined in Section 8680.3.

(c) Matching fund assistance for cost sharing required under federal public assistance programs.

(d) Indirect costs defined as eligible by the Office of Emergency Services and in accordance with the federal Office of Management and Budget Circular No. A-87, or its successors, and any other assistance deemed necessary by the Director of Emergency Services.

(e) Necessary and required site preparation costs for mobilehomes, travel trailers, and other manufactured housing units provided by the federal temporary housing assistance program operated by the Federal Emergency Management Agency.

SEC. 3. Section 8690.4 of the Government Code is amended to read:

8690.4. The Controller shall establish the following four special accounts in the Natural Disaster Assistance Fund:

(a) The Public Facilities and Local Agency Disaster Response Account, into which shall be paid all moneys appropriated by the Legislature for allocation for (1) the repair, restoration, reconstruction, or replacement of facilities belonging to local agencies damaged as a result of natural disasters, (2) matching fund assistance for cost sharing required under federal disaster assistance programs, as specified in subdivisions (b) (c), and (e) of Section 8685, and (3) local agency personnel overtime costs and supplies used during eligible disaster response and recovery activities, including the cost of administering those activities, as specified in subdivisions (a) and (d) of Section 8685.

(b) The Street and Highway Account, into which shall be paid all resources transferred from the Street and Highway Disaster Fund, any money received from the federal government as reimbursement to any city or county for expenditures from funds allocated, transferred or expended pursuant to this chapter for a street and highway project, any money hereafter appropriated by the Legislature for allocation for street and highway projects, and any income from investment of moneys in the account and payments by local agencies in reimbursement of moneys disbursed from the account including deferred payments with charges, pursuant to Section 8686.8.

(c) The Office of Emergency Services Disaster Administration Support Account, into which shall be paid all moneys appropriated by the Legislature for allocation for state administrative and engineering support required to respond to a specific disaster in accordance with the state disaster assistance program authorized under this chapter.

(d) The Earthquake Emergency Investigations Account, into which shall be paid all moneys appropriated by the Legislature to the Seismic Safety Commission for allocation for the purpose of enabling immediate investigation of damaging earthquakes. Allocations may be made by the commission to assist organizations which have incurred expenses in the course of conducting earthquake investigations. Allocations may be made to cover the following expenses:

(1) Travel, meals, and lodging.

(2) Publishing of findings.

(3) Contractor assistance in the investigation.

(4) Other expenses which the commission may allow as necessary to assist the investigation.

The unpredictable nature of earthquakes necessitates immediate access to funds for investigative purposes. For this reason, notwithstanding any other provision of law, funds in the Earthquake Emergency Investigations Account shall be available for expenditure without regard to fiscal years.

(e) It is the intent of the Legislature that the Public Facilities and Local Agency Disaster Response Account, the Street and Highway Account, and the Office of Emergency Services Administration Support Account each have an unencumbered balance of one million dollars ($1,000,000) at the beginning of each fiscal year.

In the event that any of these three accounts require additional moneys to meet claims against the account, the Director of Finance may transfer moneys from the Special Fund for Economic Uncertainties to the account in that amount sufficient to pay the amount of the claims that exceed the unencumbered balance in the account, provided that the transfer is not made prior to notification in writing to the Joint Legislative Budget Committee of the reason and amount of transfer.

CHAPTER 1511

An act to add Chapter 4 (commencing with Section 16600) to Division 12.5 of the Health and Safety Code, relating to educational institutions' buildings.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 16600) is added to Division 12.5 of the Health and Safety Code, to read:

CHAPTER 4. PUBLIC POSTSECONDARY BUILDINGS

16600. (a) The State Architect and the State Building Standards Commission, in consultation with, and with the concurrence of, the University of California, the California State University, the Structural Engineers Association of California, and the Seismic Safety Commission, shall develop and adopt building seismic retrofit guidelines for state buildings, including those owned by the University of California and by the California State University, by January 1, 1993.

(b) Building seismic retrofit guidelines shall include provisions for the abatement of falling hazards that are structural or nonstructural components of buildings and that pose serious threats to life, including, but not limited to, parapets, appendages, cornices, hanging objects, and building cladding.

(c) Building seismic retrofit guidelines shall include provisions for the strengthening of structures of buildings, or the means necessary to reduce the response of a building to ground shaking during an earthquake, so as to significantly reduce the hazards to life, while concomitantly providing for safe egress of occupants during and immediately after an earthquake.

(d) Building seismic retrofit guidelines shall be consistent with the state Historical Building Code (Part 2.7 (commencing with Section 18950), Division 13) and shall include provisions for the preservation of historical buildings.

(e) Building seismic retrofit guidelines shall incorporate building seismic retrofit standards developed pursuant to Sections 8875.5 and 8879.5 of the Government Code.

(f) The State Architect and the State Building Standards Commission, in cooperation with the University of California, the California State University, the Structural Engineers Association of California, and the Seismic Safety Commission, shall develop and adopt seismic retrofit building standards for state buildings, including those owned by the University of California and by the California State University by July 1, 1996. The standards for state

buildings owned by the University of California and the California State University shall not be more stringent than the standards for other state buildings.

(g) The State Architect and the State Building Standards Commission, in cooperation with the Structural Engineers Association of California, shall submit the regulations, findings, and data developed according to this chapter to model code writing agencies and organizations for review and development into code format for consideration and adoption into future model codes, as defined in Section 18916, by August 1, 1997.

16601. (a) The State Building Standards Commission shall review and approve the guidelines adopted by the State Architect and the State Building Standards Commission pursuant to Section 16600 by January 1, 1994, and take administrative actions to make the guidelines applicable to all state buildings, including those owned by the University of California or the California State University.

(b) The State Building Standards Commission shall review and approve the seismic retrofit building standards as developed by the State Architect and the State Building Standards Commission pursuant to Section 16600 by July 1, 1997, and take administrative actions to make the standards applicable to all state buildings, including those owned by the University of California or the California State University.

16603. No provision of this chapter shall apply to the University of California except to the extent that the Regents of the University of California, by resolution, make that provision applicable.

16604. It is the intent of the Legislature that funds to carry out the provisions of this chapter in the amount of thirty thousand dollars ($30,000) be provided as follows:

(a) The sum of fifteen thousand dollars ($15,000) from the June 1990 Higher Education Capital Outlay Bond Fund pursuant to Chapter 14.4 (commencing with Section 67345) of Part 40 of the Education Code, known as the Higher Education Bond Act of June 1990.

(b) The sum of fifteen thousand dollars ($15,000) from the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990 pursuant to Chapter 12.47 (commencing with Section 8878.50) of Division 1 of Title 2 of the Government Code, known as the Earthquake Safety and Public Buildings Rehabilitation Bond Act of 1990.

CHAPTER 1512

An act to amend Section 533.5 of the Insurance Code, relating to indemnity.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 533.5 of the Insurance Code is amended to read:

533.5. (a) No policy of insurance shall provide, or be construed to provide, any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code by the Attorney General, any district attorney, or any city prosecutor, notwithstanding whether the exclusion or exception regarding this type of coverage or indemnity is expressly stated in the policy.

(b) No policy of insurance shall provide, or be construed to provide, any duty to defend, as defined in subdivision (c), any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the recovery of a fine, penalty, or restitution is sought by the Attorney General, any district attorney, or any city prosecutor, notwithstanding whether the exclusion or exception regarding the duty to defend this type of claim is expressly stated in the policy.

(c) For the purpose of this section, "duty to defend" means the insurer's right or obligation to investigate, contest, defend, control the defense of, compromise, settle, negotiate the compromise or settlement of, or indemnify for the cost of any aspect of defending any claim in any criminal action or proceeding or in any action or proceeding brought pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of, Division 7 of the Business and Professions Code in which the insured expects or contends that (1) the insurer is liable or is potentially liable to make any payment on behalf of the insured or (2) the insurer will provide a defense for a claim even though the insurer is precluded by law from indemnifying that claim.

(d) Any provision in a policy of insurance which is in violation of subdivision (a) or (b) is contrary to public policy and void.

SEC. 2. The amendments made by this act are intended to clarify the Legislature's intent relative to the enactment of Chapter 489 of the Statutes of 1988, and do not constitute a change in, but are

declaratory of, existing law.

The intent of the Legislature in enacting Chapter 489 of the Statutes of 1988 was:

(a) Section 533.5 of the Insurance Code shall be applicable to insurance coverage and to the duty to defend only in criminal actions and in actions or proceedings brought by the Attorney General, any district attorney, or any city prosecutor, pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of, or Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

(b) Not to affect the existence, or nonexistence, of insurance coverage, or the duty to defend in actions such as, but not limited to, actions brought by any entity pursuant to Section 25360 of the Health and Safety Code, Section 13304 of the Water Code, or any similar federal law.

CHAPTER 1513

An act to add Section 25940 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 25940 is added to the Revenue and Taxation Code, to read:

25940. Whenever any foreign corporation which fails to qualify to do business in this state or whose powers, rights, and privileges have been forfeited, or any domestic corporation which has been suspended, and which is doing business in this state, within the meaning of Section 23101, fails to make and file a return as required by this part, the Franchise Tax Board shall impose a penalty of two thousand dollars ($2,000) per income year, unless the failure to file is due to reasonable cause and not willful neglect. The penalty shall be in addition to any other penalty which may be due under this part. The penalty shall be imposed if the return is not filed within 60 days after the Franchise Tax Board sends the taxpayer a notice and demand to file the required tax return.

CHAPTER 1514

An act to add Section 25696.5 to the Public Resources Code, relating to energy.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 25696.5 is added to the Public Resources Code, to read:

25696.5. (a) Every California-based energy technology and energy conservation firm awarded direct financial assistance pursuant to Section 25696 shall reimburse the commission for that assistance, when both of the following conditions have been met:

(1) The assistance was substantial and essential for the completion of a specific identifiable project.

(2) The resulting project is producing revenues.

(b) All moneys appropriated for purposes of this chapter and all moneys received by the commission as reimbursement under this section shall be deposited in the Energy Resources Programs Account and shall be available, when appropriated by the Legislature, for the purposes of this chapter.

CHAPTER 1515

An act to amend, repeal, and add Section 22655.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 22655.5 of the Vehicle Code is amended to read:

22655.5. (a) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove a motor vehicle from the highway or from public or private property within the territorial limits in which the officer may act, if the peace officer has probable cause to believe either of the following:

(1) That the vehicle was used in the commission of a public offense.

(2) That the vehicle is itself evidence which tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime

has been committed.

(b) Notwithstanding Section 3068 of the Civil Code or Section 22851 of this code, the following apply with respect to a vehicle removed pursuant to this section:

(1) The owner of the vehicle is not liable for any resulting towing and storage fees unless the vehicle was used by the alleged perpetrator of the crime with the express or implied permission of the owner of the vehicle.

(2) The owner of a stolen vehicle that is removed and held for investigatory or prosecution purposes, or for use as an exhibit in a judicial proceeding, is not liable for any resulting towing and storage fees.

(3) Any towing and storage charges for a vehicle for which the owner is not liable pursuant to paragraph (2) shall be paid by the public agency employer of the peace officer who ordered the removal and storage of the vehicle or the prosecuting agency which ordered the storage of the vehicle.

(c) In any prosecution of the crime for which a vehicle was impounded pursuant to this section, the prosecutor may request, and the court may order, the perpetrator of the crime, if convicted, to pay the costs of towing and storage of the vehicle.

(d) Nothing in this section exempts the public agency whose employee ordered the removal of the vehicle pursuant to subdivision (a) from the notification requirements of Section 22852.

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 2. Section 22655.5 is added to the Vehicle Code, to read:

22655.5. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove a motor vehicle from the highway or from public or private property within the territorial limits in which the officer may act under the following circumstances:

(a) When any vehicle is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle was used as the means of committing a public offense.

(b) When any vehicle is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle is itself evidence which tends to show that a crime has been committed or that the vehicle contains evidence, which cannot readily be removed, which tends to show that a crime has been committed.

(c) Notwithstanding Section 3068 of the Civil Code or Section 22851 of this code, no lien shall attach to a vehicle removed under this section unless the vehicle was used by the alleged perpetrator of the crime with the express or implied permission of the owner of the vehicle.

(d) In any prosecution of the crime for which a vehicle was impounded pursuant to this section, the prosecutor may request, and

the court may order, the perpetrator of the crime, if convicted, to pay the costs of towing and storage of the vehicle.

(e) This section shall become operative on January 1, 1993.

SEC. 3. The Legislative Analyst shall determine the aggregate amount of claims submitted by local agencies to the Commission on State Mandates during the 1991 calendar year for reimbursement of costs incurred pursuant to Section 1 of this act, and report that amount to the Legislature on or before January 31, 1992.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1516

An act to amend Section 14496 of, and to add and repeal Section 14088.18 of, the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to increase the availability of alternative forms of access to Medi-Cal beneficiaries and to establish additional nonprofit primary care case management plans in areas which are not currently being served.

SEC. 2. Section 14088.18 is added to the Welfare and Institutions Code, to read:

14088.18. (a) In order to increase the number of nonprofit providers under this article, the department may enter into contracts each fiscal year under this section with up to three eligible nonprofit organizations to provide a one-time interest-bearing loan, repayable at the Pooled Money Investment Account rate, to that eligible organization.

(b) Contracts entered into pursuant to this section shall be limited to contracts within those counties where the department does not have contracts authorized by this article on the effective date of this section.

(c) (1) Any loan entered into pursuant to this section shall not exceed one hundred thousand dollars ($100,000).

(d) The department shall adopt standards and procedures for loan applications and repayment of the loans made pursuant to this section.

(e) The department shall make no loan pursuant to this section until the department has made savings payments to contractors who have entered into contracts under this article on or before the effective date of this section.

(f) For purposes of this section, "eligible nonprofit organization" means any organization which meets all of the following requirements:

(1) The organization is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code.

(2) The organization is organized to provide health care to the medically underserved and to provide services in service areas.

(g) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

SEC. 3. Section 14496 of the Welfare and Institutions Code is amended to read:

14496. (a) Alternate methods of payment for a pilot program may include, but shall not be limited to, a prospectively negotiated reimbursement rate, fee-for-service, retainer, capitation, or other basis.

(b) In order to implement expeditiously the budgeting decisions of the Legislature, the director shall, to the extent permitted by federal law, adopt regulations setting rates payable to providers which reflect such decisions 30 days after the enactment of the Budget Act and of any other appropriation which changes the level of funding for Medi-Cal services. The proposed regulations shall be submitted to the Department of Finance five days prior to the date of adoption. With the written approval of the Department of Finance, the director shall adopt such regulations as emergency regulations in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code). For purposes of such act, the adoption of such regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare.

(c) In order to implement expeditiously the budgeting decisions of the Legislature, the director and the contractor shall, to the extent permitted by federal law, amend the pilot project contract to reflect such decisions 60 days after the enactment of the Budget Act and of any other appropriation which changes the level of funding for Medi-Cal services. Any approvals, ratifications, reviews, or analyses of such amendments required to be undertaken by any state agency or state department shall be completed within the 60-day period specified in this subdivision.

SEC. 4. The State Department of Health Services shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to implement this act. The adoption of regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health or safety. These regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 5. The repeal of Section 14088.18 of the Welfare and Institutions Code on January 1, 1995, shall not result in the cancellation of any outstanding loan entered into under that section prior to January 1, 1995, and which is in effect on that date.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide timely funding for the implementation of programs pursuant to this act, it is necessary that this act take effect immediately.

CHAPTER 1517

An act to amend Sections 714, 1354, and 1366 of the Civil Code, relating to common interest developments.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in enacting this act to promote the economic installation and efficient operation of solar energy systems in common interest developments, consistent with covenants, conditions, and restrictions that do not significantly increase the cost of the energy system or significantly decrease the efficiency of the energy system.

The Legislature hereby requests that meetings of interested parties be convened for the purpose of drafting standards or guidelines to define the "reasonableness" of these restrictions in clear terms, and to make recommendations to the Legislature in this regard on or before July 1, 1991.

SEC. 2. Section 714 of the Civil Code is amended to read:

714. Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property which effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

This section shall not apply to provisions which impose reasonable

restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

For the purposes of this section, "solar energy system" has the same meaning as defined in Section 801.5.

SEC. 3. Section 1354 of the Civil Code is amended to read:

1354. The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both. In any action to enforce the declaration, the prevailing party shall be awarded reasonable attorney's fees and costs.

SEC. 4. Section 1366 of the Civil Code is amended to read:

1366. (a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, "quorum" means more than 50 percent of the owners of an association.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum means more than 50 percent of the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

(1) An extraordinary expense required by an order of a court.

(2) An extraordinary expense necessary to repair or maintain the

common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.

(3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the proforma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(c) Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due. If an assessment is delinquent the association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.

(2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars ($10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed 12 percent interest, commencing 30 days after the assessment becomes due.

(d) Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

SEC. 5. Sections 2, 3, and 4 of this act shall not become operative until July 1, 1991.

CHAPTER 1518

An act to amend Section 53066.1 of the Government Code, relating to cable television.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 53066.1 of the Government Code is amended to read:

53066.1. (a) Notwithstanding the provisions of Section 53066, any cable television system which meets all of the following criteria:

(1) Has a capacity of 20 or more video channels.

(2) Receives television signals from a satellite-earth receiving station.

(3) (A) Has a subscriber penetration ratio of less than 70 percent in the entire franchise area which is located in a county or portion of a county which has available three significantly viewed television stations, or two significantly viewed television stations and an educational television station; or (B) has a subscriber penetration ratio of 70 percent or greater in a franchise area which is located in a county or a portion of a county which has available five significantly viewed television stations, or four significantly viewed television stations and an educational television station.

(4) Complies, upon the filing of a statement pursuant to subdivision (d), with the community services channel requirements set forth in subdivision (f),

shall, upon written notice to the franchisor, and upon publication of that notice in a newspaper of general circulation within the cable television system's franchise area, be exempt from control by that franchisor or any other authority as to rates, charges, and rate structures. However, the notice may not be given prior to the expiration of two years following the completion and activation of 80 percent of the plant miles required to be constructed by the franchisee pursuant to the original terms of its franchise.

(b) Notwithstanding Section 53066, any cable television system which is unable to meet all of the requirements of subdivision (a), whose franchise area is located in a county or portion of a county which has available three significantly viewed television stations, or two significantly viewed television stations and an educational television station, and which meets one of the following criteria:

(1) Has a subscriber penetration ratio of 70 percent or more in its franchise area and meets all requirements of subdivision (a), except clause (B) of paragraph (3).

(2) Has a capacity of at least 12 video channels in a franchise area with fewer than 3,500 subscribers in a community of less than 20,000 in population, and otherwise meets the requirements of paragraph (4) of subdivision (a),

may, upon written notice to the franchisor, and upon publication of that notice in a newspaper of general circulation within the cable television system's franchise area, thereafter adjust those rates, charges, and rate structures previously subject to control, at any time, without the approval of the franchisor or other authority, by an amount not to exceed 75 percent of the percentage increase in the Consumer Price Index for the period since the date of the last previous adjustment, or December 31, 1975, if there have been no adjustments since December 31, 1975.

(c) Notwithstanding Section 53066, a cable television system

which satisfies the requirements of subdivision (b), and which, prior to January 1, 1980, had a capacity of less than 20 video channels, and subsequently rebuilds its system to a capacity of 20 or more video channels, may initially raise those rates, charges, and rate structures, previously subject to control, without the approval of the franchisor or other authority, to a level not to exceed the statewide average rates for those cable television systems having a capacity of 20 or more video channels, and subsequently thereafter adjust those rates, charges, and rate structures at any time without the approval of the franchisor or other authority, by an amount not to exceed 75 percent of the percentage increase in the Consumer Price Index for the period since the date of the last previous adjustment. The statewide average rates for those cable television systems in California having a capacity of 20 or more video channels shall be determined by the Department of Consumer Affairs on the basis of information as to the respective rates, charges, and rate structures of the cable television systems submitted to the Department of Consumer Affairs by March 1 of each year that this section is in effect. The average rates shall be determined by multiplying each applicable cable television system's rates by the number of its subscribers, adding together that figure for all applicable cable television systems, and dividing that total by the total number of applicable subscribers. The Department of Consumer Affairs shall determine the statewide average rates by July 1 of each year that this section is in effect. If a rate adjustment pursuant to this subdivision occurs one year or more after the date used by the Department of Consumer Affairs for its most recent determination of statewide average rates, the adjustment may include an additional rate increase equal to the percentage increase in the Consumer Price Index occurring since the date of the department's most recent determination of statewide average rates.

(d) Within 15 working days of the issuance of the written notice to the franchisor under subdivision (a) or (b), the cable television system shall submit to the franchisor a statement, certified pursuant to Section 2015.5 of the Code of Civil Procedure, setting forth each of the following:

(1) The name under which the cable television system is doing business.

(2) The mailing address and telephone number of the system.

(3) The video channel capacity of the system.

(4) The subscriber penetration ratio of the system computed within 60 days prior to issuance of the notice to the franchisor.

(5) The method by which the system receives television signals from a satellite-to-earth receiving station.

(6) An identification of the significantly viewed television stations within the county in which the system operates.

(7) The facts demonstrating timely compliance with the community service channel requirement set forth in subdivision (f).

(e) Neither party to a franchise agreement or prospective franchise agreement, or any renewal thereof, shall request, demand,

propose, or agree to any provision which by its terms or effect waives any right to which either party is entitled under this section. Any such provision shall be void. This provision is not intended to either validate or invalidate any action by a party to a franchise agreement, prospective franchise agreement or any renewal thereof entered into prior to January 1, 1983, which would otherwise be prohibited by its terms.

(f) A cable television system shall be deemed to be offering a community service channel program if the system does all of the following:

(1) (A) Provides, for those systems which have a capacity of not more than 20 video channels, one channel or its equivalent for use by local members of the public and government entities; or (B) provides for those systems which have a capacity of more than 20 video channels, a second such channel if the first channel is in use during 80 percent of the weekdays for 80 percent of the time during any consecutive 13-hour period for 10 consecutive weeks; or (C) provides, if the system has a capacity of more than 30 video channels, a third such composite channel if the second channel is in use during 80 percent of the weekdays for 80 percent of the time during any consecutive 13-hour period for 10 consecutive weeks.

Upon written request of the franchisor, for those systems which have a capacity of 20 or more channels, the first of those channels shall, if possible, consistent with the requirements of federal law, and reserving three additional channels for programming by the system, be provided as part of the basic service of the system.

(2) Provides, if requested, to individuals, groups and entities using community service channels, technical advice by local program staff and reasonable access to local studio and earth station receiving facilities, if those facilities and staff are part of the local system.

(3) Notifies secondary schools and community colleges located within the franchise area which furnish training in the uses of community service channels of the availability of the system's community service channels.

(4) Has available for use without charge tape playback facilities for entrance into the system.

(5) Provides, by display information on the community service channels, written notice to subscribers, or published notice, information to potential users of the opportunity to have access to community service channels.

(6) Provides, upon election to deregulate and thereafter, as requested, the name, address, and telephone number of the system, the name of the system manager, and the status and utilization of the community service channels, to the foundation for community service channels.

(g) (1) If, at the time of a cable television system's election under subdivision (a), (b), or (c), the franchisor contends that the system is not in compliance with the capacity, satellite-earth receiving station, or penetration ratio requirements thereof, or is not in

substantial compliance with the material provisions of its franchise, excluding the performance of any term or condition which the system is or has been excused or prevented from performing or which is, in whole or in part, in the control of a third party, or which is, in whole or in part, invalid, the franchisor may, within 90 days of receipt of the written notice of the system's election, notify the system in writing of the alleged noncompliance, setting forth in detail the grounds therefor. Within 90 days of receipt of the notice from the franchisor, the system shall correct the alleged noncompliance and so notify the franchisor in writing, or shall respond in writing to the allegations set forth in the notice. The franchisor shall have 30 days from the receipt of the system's response within which to renew in writing all or part of its earlier allegations and shall notice a hearing for the purpose of reviewing the system's alleged noncompliance. The hearing shall be commenced not less than 20 or more than 30 days from the end of the 30-day period, and shall be concluded within 30 days of its commencement. If the franchisor does not provide written notice within the 30-day period, it shall be barred, in any proceedings to determine the right to deregulate under this section, from alleging that the system has failed to correct any of the items of noncompliance alleged in the original notice given by the franchisor to the system.

(2) If, as a result of the hearing pursuant to paragraph (1), the franchisor determines that the cable television system was not in compliance at the time of its election and has failed to correct its noncompliance and that no good cause exists for the failure to so comply, the franchisor may file an action in a court of competent jurisdiction to set aside the election. The action shall be filed within 120 days of the conclusion of the hearing or is forever barred. All factual and legal issues in any such action shall be determined de novo in accordance with the rules of civil procedure and evidence applicable to breach of contract actions between private parties. If it is judicially determined that the system was not in compliance and did not timely correct its noncompliance and that no good cause exists for the failure to so comply, the remedy therefor shall be a refund in the form of a monthly credit to the subscribers. The amount of the refund shall bear a reasonable relation to the nature and extent of the system's noncompliance, but in no event shall be greater than any increase in rates obtained under this section. The maximum number of monthly credits to subscribers shall be limited to the number of months during which the system was in noncompliance. At the franchisor's option, this remedy may be utilized in lieu of any remedies provided for in the franchise. A judicial determination setting aside a system's election hereunder shall not preclude a subsequent election by the system when it has cured its noncompliance. The court shall reserve jurisdiction to determine whether the system has so complied and the date of compliance.

(3) The alleged breaches of the material provisions of the franchise which may be considered in determining eligibility to deregulate shall be limited to those which (A) the franchisor has notified the franchisee of in writing within the one-year period immediately preceding the date of the election, (B) the franchisor has orally notified the franchisee of during the six months immediately preceding the date of the election, or (C) occurred within the 90 days immediately preceding the election to deregulate, if discovered within 20 days following the election to deregulate.

(h) (1) If at any time after a cable television system's election under subdivision (a), (b), or (c), the franchisor contends that the system is not in compliance with subdivision (f), the franchisor may notify the system in writing of the alleged noncompliance, setting forth in detail the grounds therefor. Within 90 days of receipt of the notice from the franchisor, the system shall correct the alleged noncompliance and so notify the franchisor in writing or shall respond in writing to the allegations set forth in the notice. The franchisor shall have 30 days from the receipt of the system's response within which to renew in writing all or part of its earlier allegations and shall notice a hearing for the purpose of reviewing the system's alleged noncompliance. The hearing shall be commenced not less than 20 nor more than 30 days from the end of the 30-day period, and shall be concluded within 30 days of its commencement. If the franchisor does not provide written notice within the 30-day period, it shall be barred, in any proceedings to determine the system's compliance with subdivision (f), from alleging that the system has failed to correct any of the items of noncompliance alleged in the original notice given by the franchisor to the system.

(2) If, as a result of the hearing pursuant to paragraph (1), the franchisor determines that the cable television system was not in compliance at the time of the franchisor's original notice pursuant to paragraph (1) and has failed to correct its noncompliance and that no good cause exists for the failure to comply, the franchisor's sole remedy shall be an action in a court of competent jurisdiction to set aside any increase in rates obtained under this section. The action shall be filed within 120 days of the conclusion of the hearing or is forever barred. All factual and legal issues in any such action shall be determined de novo in accordance with the rules of civil procedure and evidence applicable to breach of contract actions between private parties. If it is judicially determined that the system was not in compliance and did not timely correct its noncompliance and that no good cause exists for the failure to so comply, the sole remedy therefor shall be a refund in the form of a monthly credit to the subscribers. The amount of the refund shall bear a reasonable relation to the nature and extent of the system's noncompliance, but in no event shall it be greater than any increase in rates obtained under this section for the number of months which elapsed from the date of the franchisor's original notice pursuant to paragraph (1) to

the date the noncompliance was corrected. The maximum number of monthly credits to subscribers shall be limited to that same number of months. In no event, however, shall the refund reduce the cable system's rates to a confiscatory level below that which will enable the cable system to earn a reasonable rate of return on its investment.

(i) The franchisee may utilize any community service channel which is not used for community service programming if community service programming is given scheduling priority.

(j) The franchisor may elect to act as public trustee of the community service channel, to ensure the use of the channel or channels as community service channels.

(k) Neither the franchisor nor the franchisee shall be liable for acts arising from the use of the channel or channels by persons other than the franchisee. The franchisee shall establish regulations governing the use of those channels which provide uniform and nondiscriminatory standards, ensure adequate opportunity for participation by local nongovernmental users and incorporate restrictions on libelous, slanderous, or illegal programs.

(*l*) No cable television system which has made an election under subdivision (a), (b), or (c) shall discriminate as to its rates, charges, and rate structures against any portion of a franchise area because that portion of the franchise area has poor broadcast television signal reception.

(m) For purposes of this section, the following definitions apply:

(1) "Basic service" means the lowest level of service offered by the system to individual household subscribers.

(2) "Cable television system" means a community antenna television system, under common ownership and control, serving a franchise area or two or more contiguous or electronically connected franchise areas.

(3) "Capacity" means the number of video channels capable of being carried by a cable television system, including optional services, irrespective of programming or lack thereof, or authority to carry any programming.

(4) "Consumer Price Index" means the most recently issued Consumer Price Index published by the United States Bureau of Labor Statistics for the area in which the cable television system is located or the nearest area for which such index is published.

(5) "Franchise" means any franchise or license granted pursuant to Section 53066, or any other authority, for the construction or operation of a cable television system.

(6) "Franchisor" means any city, county, or city and county, including any chartered city, county, or city and county, granting a franchise.

(7) "Satellite-earth receiving station" means any structure or device utilized to receive signals from a satellite.

(8) "Significantly viewed television station" means each station which: (A) is designated as such for the area by the Federal

Communications Commission in its 1972 listing or any future such listings; or (B) satisfies the Federal Communications Commission requirements as to significantly viewed signals for the area as contained in the most recent Arbitron study; or (C) has sufficient signal strength in the geographic area served by the cable television system to meet the grade B contour testing procedures outlined in Section 73.683, et seq., of Title 47 of the Code of Federal Regulations (particularly subsection (c) of Section 73.686, "collection of field strength data to determine television service in specific communities") from the rules and regulations of the Federal Communications Commission. However, the test in clause (C) may be utilized only for deregulation pursuant to clause (B) of paragraph (3) of subdivision (a). In the event that the cable television system utilized clause (A) or clause (B) for qualifying for deregulation pursuant to clause (B) of paragraph (3) of subdivision (a), the franchisor may require the system to submit the results of a test demonstrating that a minimum of five stations have sufficient signal strength to meet the requirements of clause (C). That request by the franchisor shall be made within 30 days from receipt of the statement provided for in subdivision (d).

(9) "Subscriber penetration ratio" means the number of subscribing residences divided by the total number of residences having cable available. For the purposes of this definition, a "residence" is a single-family dwelling unit which is or would be billed directly by the cable television system on an individual subscriber basis.

(n) In the absence of like provisions in the franchise, if a franchisee elects deregulation pursuant to this section, the franchisor may institute the use of any of the following mechanisms:

(1) The legislative body or bodies having jurisdiction over the franchise area may establish procedures, by ordinance, providing for resolution of individual consumer complaints. Those procedures may include mediation procedures, arbitration procedures, procedures to deposit in an escrow account the disputed portion of the individual consumer's monthly service payments during pendency of the dispute, and prohibiting service disconnection of the complaining consumer during pendency of the dispute if the moneys are paid into the escrow accounts. The ordinance shall provide procedures for administrative hearings and appeals. The legislative body or bodies may appoint mediators, arbitrators, or other persons or bodies to resolve disputes. The ordinance may contain a schedule of penalties for consumer complaints, but the penalty for an individual complaint shall not exceed two hundred dollars ($200). Prior to enacting such an ordinance, the legislative body or bodies shall give the franchisee 15 days or more written notice of the franchisor's intent to enact the ordinance, together with an outline of the intended provisions or a copy of the proposed ordinance. If requested by the franchisee, the ordinance shall provide for three-person arbitration boards, with one arbitrator chosen by the franchisor, one by the franchisee, and the

third arbitrator chosen by the first two arbitrators.

(2) The legislative body may, by ordinance, provide a schedule of penalties for violations of the material terms of the franchise, not to exceed five hundred dollars ($500) for each occurrence or series of related occurrences. Prior to enacting such an ordinance, the legislative body or bodies shall give the franchisee 15 days or more written notice of the franchisor's intent to enact the ordinance, together with an outline of the intended provisions or a copy of the proposed ordinance. Those penalties may be levied if the franchisor gives written notice to the franchisee to correct the breach, and the franchisee fails to correct the problem within a reasonable period of time after delivery of the notice. The franchisor may not levy a penalty more than one year after the date it notifies the franchisee of the alleged franchise breach. The ordinance shall provide that if the franchisee objects to the penalty, in writing, to the franchisor, the franchisee and franchisor shall submit the dispute to arbitration in a manner mutually agreed upon, or in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be final. The ordinance shall provide a limit on the time the franchisee has to object to a penalty, but the time limit may not be less than 60 days. The franchisor may require the franchisee to post a bond within 90 days of the franchisee's election to deregulate and require maintenance of the bond as a condition to continuing deregulation under this section. The bond may not exceed ten thousand dollars ($10,000) for each 5,000 subscribers or fraction thereof in the franchise area, with a maximum limit of fifty thousand dollars ($50,000).

(3) The franchisor may require in the ordinance that the franchisee provide written notice to each subscriber at intervals of not more than one year, of the consumer protection sanctions and procedures enacted pursuant to paragraph (1). The telephone number and address of the franchisee and franchisor to whom complaints may be directed shall be included in the notice.

(o) The Director of Consumer Affairs may, pursuant to the director's authority under Section 321 of the Business and Professions Code, receive and act upon subscriber complaints regarding cable television service, and may initiate action thereon as authorized by that section.

(p) While the development and the regulation of cable television is a matter of statewide concern, the Legislature finds and directs that the exercise of the police power of the State of California concerning cable television should, except as otherwise directed by the Legislature, remain in the cities, counties, or cities and counties; and that the cable television companies and the cities, counties, or cities and counties should remain able, subject to the proper limits of that police power, to contract one with the other pursuant to the ordinary rules of, and subject to the ordinary remedies of, contract law. However, neither a cable television system nor a franchisor may, with respect to any franchise agreement awarded or renewed on or

after January 1, 1983, raise the defense of impairment of contract in any case where the due and proper exercise of police power, or the limits thereof, is at issue, and a provision to this effect shall be deemed to be incorporated in any such franchise agreements.

(q) This section shall establish the state's preemption, under the terms and conditions prescribed herein, of the control and regulation of cable television subscriber rates, charges, and rate structures heretofore or hereinafter established by any franchisor pursuant to Section 53066, to the extent that such control or regulation is inconsistent with this section.

(r) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1992, deletes or extends that date. However, the rates, charges, and rate structures in effect on January 1, 1992, shall not be subject to reduction by a franchisor having rate reduction authority.

CHAPTER 1519

An act to amend Section 394 of the Military and Veterans Code, relating to state military service.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 394 of the Military and Veterans Code is amended to read:

394. (a) No person shall discriminate against any officer, warrant officer or enlisted member of the military or naval forces of the state or of the United States because of that membership. No member of the military forces shall be prejudiced or injured by any person, employer, or officer or agent of any corporation, company, or firm with respect to that member's employment, position or status or be denied or disqualified for employment by virtue of membership or service in the military forces of this state or of the United States.

(b) No officer or employee of the state, or of any county, city and county, municipal corporation, or district shall discriminate against any officer, warrant officer or enlisted member of the military or naval forces of the state or of the United States because of that membership. No member of the military forces shall be prejudiced or injured by any officer or employee of the state, or of any county, city and county, municipal corporation, or district with respect to that member's employment, appointment, position or status or be denied or disqualified for or discharged from that employment or position by virtue of membership or service in the military forces of this state or of the United States.

(c) No person shall prohibit or refuse entrance to any officer or enlisted member of the Army or Navy of the United States or of the military or naval forces of this state into any public entertainment or place of amusement or into any of the places described in Sections 51 and 52 of the Civil Code because that member wears the uniform of the organization to which he or she belongs.

(d) No employer or officer or agent of any corporation, company, or firm, or other person, shall discharge any person from employment because of the performance of any ordered military duty or training or by reason of being an officer, warrant officer, or enlisted member of the military or naval forces of this state, or hinder or prevent that person from performing any military service or from attending any military encampment or place of drill or instruction he or she may be called upon to perform or attend by proper authority; prejudice or harm him or her in any manner in his or her employment, position, or status by reason of performance of military service or duty or attendance at military encampments or places of drill or instruction; or dissuade, prevent, or stop any person from enlistment or accepting a warrant or commission in the California National Guard or Naval Militia by threat or injury to him or her in respect to his or her employment, position, status, trade, or business because of enlistment or acceptance of a warrant or commission.

(e) (1) No private employer or officer or agent of any corporation, company, or firm, or other person, shall restrict or terminate any collateral benefit for employees by reason of an employee's temporary incapacitation incident to duty in the National Guard or Naval Militia. As used in this subdivision, "temporary incapacitation" means any period of incapacitation of 52 weeks or less.

(2) As used in this subdivision, "benefit" includes, but is not limited to, health care which may be continued at the employee's expense, life insurance, disability insurance, and seniority status.

(f) Any person violating this section is guilty of a misdemeanor.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1520

An act to amend Section 8730 of the Business and Professions Code, relating to land surveying.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 8730 of the Business and Professions Code is amended to read:

8730. The following are not required to be licensed under this chapter:

(a) Officers and employees of the United States of America, practicing solely as those officers or employees, except when surveying the exterior boundaries of federal lands in this state.

(b) Insofar as he or she acts in the following capacity:

(1) Any state, county, city, or district employee directly responsible to a licensed land surveyor or registered civil engineer.

(2) Any subordinate to a land surveyor or civil engineer licensed or registered as required by the laws of this state in so far as he or she acts as a subordinate.

(c) Any officer or employee of an electric, gas, or telephone corporation, as defined in Sections 218, 222, and 234, respectively, of the Public Utilities Code, with annual revenues of twenty-five million dollars ($25,000,000) or more, whenever he or she prepares a legal description of an easement for utility distribution lines and service facilities, provided the following conditions are met:

(1) Each description identifies the corporation that prepared the description and states that it was prepared pursuant to this exemption.

(2) Each corporation has in its employ, or on contract, an individual authorized to practice land surveying who shall be responsible for establishing criteria for determining the qualifications of technical specialists preparing those legal descriptions, specifying the format and information to be shown on maps or documents containing those descriptions, and capable of answering questions regarding the preparation of those descriptions.

CHAPTER 1521

An act to add Chapter 1.5 (commencing with Section 125) to Part 1 of Division 1 of the Insurance Code, relating to liability, and making an appropriation therefor.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 125) is added to Part 1 of Division 1 of the Insurance Code, to read:

CHAPTER 1.5. RISK RETENTION

125. This chapter shall be known and may be cited as the California Risk Retention Act of 1990.

126. The Legislature finds and declares that the provisions of this chapter are for the purpose of providing a means for a bona fide for-profit or nonprofit association or individual business to insure against liability and those obligations imposed by statute.

127. Unless the context otherwise requires, the general provisions hereinafter set forth shall govern the application of this chapter and supersede any other provisions of law in conflict.

128. The purposes of this chapter are as follows:

(a) To regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the federal Liability Risk Retention Act of 1986, to the extent permitted by that law.

(b) To promote the formation and operation of risk retention groups and purchasing groups in this state. Californians who are experiencing difficulty in obtaining liability coverage are encouraged to form and operate risk retention and purchasing groups in this state.

(c) To authorize the formation of a risk retention group for directors and officers of corporations, whether for profit or nonprofit, who are engaged in the same line of business with respect to the liability risks faced by those officers and directors within the meaning of the federal Liability Risk Retention Act of 1986.

130. The following definitions govern this chapter:

(a) "Commissioner" means the Insurance Commissioner of this state or the commissioner, director, or superintendent of insurance of any other state.

(b) "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means the following:

(1) For a corporation, the state in which the purchasing group is incorporated.

(2) For an unincorporated entity, the state of its principal place

of business.

(c) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able to do either of the following:

(1) Meet obligations to policyholders with respect to known claims and reasonably anticipated claims.

(2) Pay other obligations in the normal course of business.

(d) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this state.

(e) (1) "Liability" means legal liability for damages including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of any of the following:

(A) Any business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations.

(B) Any activity of any state or local government, or any agency or political subdivision thereof.

(2) "Liability" includes financial responsibility required by the state for any activity for which an individual shall be required to obtain a license or certificate to provide a service. For purposes of this subdivision, a state agency shall have discretion to accept or deny proof of financial responsibility.

(3) "Liability" does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. Sec. 51 et seq.).

(f) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subdivision (f).

(g) "Plan of operation or a feasibility study" with respect to risk retention groups chartered in California, includes analysis which presents the expected activities and results of a risk retention group including, at a minimum, all of the following:

(1) Information to demonstrate that its members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

(2) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.

(3) Historical and expected loss experience of the proposed members and national experience of similar exposures, to the extent that this experience is reasonably available.

(4) Pro forma financial statements and projections.

(5) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition.

(6) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements.

(h) "Public entity" includes the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

(i) "Purchasing group" means any group which does all of the following:

(1) Has as one of its purposes the purchase of liability insurance on a group basis.

(2) Purchases that insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (3).

(3) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

(4) Is domiciled in any state.

(j) "Risk Retention Administration Account" means an account within the Insurance Fund to be used as a depository of moneys received under this chapter or appropriated by the Legislature for the purpose of administering this chapter.

(k) "Risk retention group" means any corporation, public entity, or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands that meets all of the following criteria:

(1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members.

(2) Which is organized for the primary purpose of conducting the activity described under paragraph (1).

(3) Which is either of the following:

(A) Chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state.

(B) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, has certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of that state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as those terms were defined in the

Product Liability Risk Retention Act of 1981 before the date of the enactment of the federal Liability Risk Retention Act of 1986.

(4) Does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over that person.

(5) Has as its members only persons who comprise the membership of the risk retention group and as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by that group.

(6) Whose members are engaged in businesses or activities similar or related with respect to the liability of which those members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations.

(7) Whose activities do not include the provision of insurance other than for the following:

(A) Liability insurance for assuming and spreading all or any portion of the liability of its group members.

(B) Reinsurance with respect to the liability of any other risk retention group or any members of that other group which is engaged in businesses or activities so that such group or member meets the requirement described in paragraph (6) from membership in the risk retention group which provides that reinsurance.

(8) The name of which includes the phrase "risk retention group."

(*l*) "State" means any state of the United States or the District of Columbia.

131. (a) An entity seeking to be licensed in this state as a risk retention group shall be organized under the laws of this state and licensed as a liability insurance company pursuant to Article 3 (commencing with Section 699) of Chapter 1 of Part 2.

(b) An entity that has not completed its chartering and licensing as a risk retention group in its domiciliary state is subject to the requirements of Article 8 (commencing with Section 820) of Chapter 1 of Part 2.

(c) In addition to the requirements of Article 3 (commencing with Section 699) of Chapter 1 of Part 2, a risk retention group licensed in this state shall submit to the commissioner a feasibility study or plan of operations and all other documentation required by the federal Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.) to be submitted by a risk retention group to a nonchartering state.

132. Risk retention groups chartered, incorporated, or licensed in states other than this state and seeking to do business as a risk retention group in this state shall file a notice of operation with the commissioner of its intention to do business in this state. The notice shall be filed with the commissioner within 60 days of the filing by the group of any notice filed with its chartering state of its intention to do business in this state, but in no event shall a notice of intended

operation be filed with the commissioner less than 60 days prior to the group commencing business in this state. In doing business in this state the risk retention group shall observe and abide by the laws of this state including the following:

(a) A risk retention group shall submit to the commissioner all of the following:

(1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information, including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under subdivision (m) of Section 130.

(2) A copy of its plan of operations or a feasibility study and revisions of the plan or study submitted to the state in which the risk retention group is chartered and licensed. However, the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which (A) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and (B) was offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date.

(3) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(4) A registration filing fee shall accompany the statement of registration, which shall be deposited in the Risk Retention Administration Account, which is hereby created within the Insurance Fund. Notwithstanding Section 13340 of the Government Code, moneys in the account are continuously appropriated to the department for purposes of this chapter.

(b) Any risk retention group within this state shall submit to the commissioner all of the following:

(1) Upon commencement of business within this state and annually thereafter, a copy of the group's annual financial statement submitted to the state in which the risk retention group is chartered and licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist.

(2) Upon request by the commissioner, a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination and all documentation received as part of the examination.

(3) Upon request by the commissioner, a copy of any outside audit performed with respect to the risk retention group.

(c) (1) As authorized under the federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3902 (a) (1) (B)), each risk retention group shall be liable for the payment of premium taxes and taxes on

premiums for business done or located within this state, and shall report to the commissioner the net premiums written on business done within this state. The risk retention group shall be subject to taxation, and any applicable fines and nonconformance fees related thereto, on the same basis as a foreign admitted insurer. Nonconformance fees shall be paid to the department and deposited in the Risk Retention Administration Account within the Insurance Fund.

(2) To the extent licensed agents and brokers are utilized pursuant to Chapter 6 (commencing with Section 1760) of Part 2, they shall report to the commissioner the premiums for direct business for risks resident or located within this state which those licensees have placed with or on behalf of, a risk retention group not chartered in this state.

(d) Any risk retention group, its agents and representatives shall comply with Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2.

(e) Any risk retention group shall comply with the laws of this state regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding that conduct, the injunction shall be obtained from a court of competent jurisdiction.

(f) Any risk retention group shall submit to an examination upon request by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state.

(g) Every application form for insurance from a risk retention group and every policy issued by a risk retention group shall contain in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(h) The following acts by a risk retention group are hereby prohibited:

(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in that group.

(2) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition.

(i) No risk retention group may offer insurance policy coverage prohibited by Section 533 or declared unlawful by the Supreme Court of California.

133. (a) No risk retention group shall be required or permitted

to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by that risk retention group.

(b) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever located, shall be covered by any insurance guaranty fund or similar mechanism in this state.

(c) When a purchasing group obtains insurance covering its members' risks from an authorized admitted insurer, only risks located in this state shall be covered by the state insurance guaranty fund.

(d) A risk retention group shall not participate in this state's joint underwriting associations, California Automobile Assigned Risk Plan, Fair Access to Insurance Requirements Plan, and market assistance plans.

134. (a) A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which shall do all of the following:

(1) Identify the state in which the group is domiciled.

(2) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase.

(3) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of that company.

(4) Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state.

(5) Identify the principal place of business of the group.

(6) Provide other information that may be required by the commissioner to verify that the purchasing group is qualified under subdivision (k) of Section 130.

(b) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee in the amount of three hundred dollars ($300) shall be submitted to the commissioner for deposit in the Risk Retention Administration Account within the Insurance Fund, except that these requirements shall not apply in the case of a purchasing group which did all of the following:

(1) Was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States.

(2) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state, and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state.

(3) Was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.

(4) Does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

(c) Any purchasing group which was doing business in this state prior to the enactment of this chapter shall, within 30 days after January 1, 1990, furnish notice to the commissioner pursuant to subdivision (a) and furnish information that may be required pursuant to subdivisions (b) and (c).

(d) Each purchasing group which is required to give notice pursuant to subdivision (a) shall also furnish information as may be required by the commissioner to:

(1) Verify that the entity qualifies as a purchasing group.

(2) Determine where the purchasing group is located.

(3) Determine appropriate tax treatment.

135. (a) No purchasing group may offer insurance policy coverage prohibited by Section 533 or declared invalid by the Supreme Court of California.

(b) A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state all of the following:

(1) The risk is not protected by an insurance insolvency guaranty fund in this state.

(2) The risk retention group or such insurer may not be subject to all insurance laws and regulations of this state.

136. The powers authorized by this chapter shall only be exercised to the extent these powers are not preempted by the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986.

137. (a) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless that person, firm, association, or corporation is licensed as an insurance agent or broker in accordance with Chapter 5 (commencing with Section 1621) of Part 2.

(b) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless that person, firm, association, or corporation is licensed as a surplus lines agent or excess line broker in accordance with Chapter 5 (commencing with Section 1621) of Part 2. A nonresident person may be licensed as a surplus lines broker for purposes of placing insurance on behalf of a purchasing group.

(c) Any person, firm, association, or corporation licensed pursuant to Chapter 5 (commencing with Section 1621) of Part 2, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by subdivision (g) of Section 132 in the case of a risk

retention group and subdivision (c) of Section 135 in the case of a purchasing group.

138. There shall be no civil liability on the part of any agent or broker who places liability insurance coverage on behalf of any risk retention group which is incorporated and licensed in this state in the event of an insolvency by the risk retention group.

140. The commissioner shall enjoin the solicitation or sale of insurance by, or the operations of, a risk retention group or purchasing group whose officers, organizers, or directors have been determined to possess a restricted license or found guilty of criminal liability pursuant to the Evidence Code due to wrongful conduct within the previous five years under circumstances which create a likelihood that the conduct would be repeated. The commissioner shall have the authority to seek injunctive relief pursuant to this section, or any other law or regulations adopted pursuant thereto.

SEC. 2. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

CHAPTER 1522

An act to amend Sections 3513, 3515, and 3517.6 of, to repeal Sections 3517.8, 3522, 3522.1, 3522.2, 3522.3, 3522.4, 3522.5, 3522.6, 3522.65, 3522.7, 3522.8, and 3522.9 of, and to repeal and add Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1 of the Government Code, relating to state employees.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 3513 of the Government Code is amended to read:

3513. As used in this chapter:

(a) "Employee organization" means any organization which includes employees of the state and which has as one of its primary purposes representing these employees in their relations with the state.

(b) "Recognized employee organization" means an employee organization which has been recognized by the state as the exclusive representative of the employees in an appropriate unit.

(c) "State employee" means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees,

supervisory employees, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(d) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(e) "Managerial employee" means any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.

(f) "Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.

(g) "Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

(h) "Board" means the Public Employment Relations Board. The Educational Employment Relations Board established pursuant to Section 3541 shall be renamed the Public Employment Relations Board as provided in Section 3540. The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter.

(i) "Maintenance of membership" means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of such employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance

of membership provision shall not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed withdrawal letter to the employee organization and a copy to the State Controller's office.

(j) "State employer," or "employer," for the purposes of bargaining or meeting and conferring in good faith, means the Governor or his or her designated representatives.

(k) "Fair share fee" means the fee deducted by the state employer from the salary or wages of a state employee in an appropriate unit who does not become a member of and financially support the recognized employee organization. The fair share fee shall be used to defray the costs incurred by the recognized employee organization in fulfilling its duty to represent the employees in their employment relations with the state, and shall not exceed the standard initiation fee, membership dues, and general assessments of the recognized employee organization.

SEC. 2. Section 3515 of the Government Code is amended to read:

3515. Except as otherwise provided by the Legislature, state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. State employees also shall have the right to refuse to join or participate in the activities of employee organizations, except that nothing shall preclude the parties from agreeing to a maintenance of membership provision, as defined in subdivision (i) of Section 3513, or a fair share fee provision, as defined in subdivision (k) of Section 3513, pursuant to a memorandum of understanding. In any event, state employees shall have the right to represent themselves individually in their employment relations with the state.

SEC. 3. Section 3517.6 of the Government Code is amended to read:

3517.6. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20750.11, 21400, 21402, 21404, 21405, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the

memorandum of understanding shall be controlling without further legislative action. In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

SEC. 4. Section 3517.8 of the Government Code is repealed.

SEC. 5. Section 3522 of the Government Code is repealed.

SEC. 6. Section 3522.1 of the Government Code is repealed.

SEC. 7. Section 3522.2 of the Government Code is repealed.

SEC. 8. Section 3522.3 of the Government Code is repealed.

SEC. 9. Section 3522.4 of the Government Code is repealed.

SEC. 10. Section 3522.5 of the Government Code is repealed.

SEC. 11. Section 3522.6 of the Government Code is repealed.

SEC. 12. Section 3522.65 of the Government Code is repealed.

SEC. 13. Section 3522.7 of the Government Code is repealed.

SEC. 14. Section 3522.8 of the Government Code is repealed.

SEC. 15. Section 3522.9 of the Government Code is repealed.

SEC. 16. Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1 of the Government Code is repealed.

SEC. 17. Chapter 10.5 (commencing with Section 3525) is added to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 10.5. EXCLUDED EMPLOYEES BILL OF RIGHTS

3525. This chapter shall be known, and may be cited, as the Bill of Rights for State Excluded Employees.

3526. The purpose of this chapter is to inform state supervisory, managerial, confidential, and employees otherwise excepted from coverage under the Ralph C. Dills Act by subdivision (c) of Section 3513 of their rights and terms and conditions of employment, and to inspire dedicated service and promote harmonious personnel relations among those representing state management in the conduct of state affairs.

3527. As used in this chapter:

(a) "Employee" means a civil service employee of the State of

California. The "State of California" as used in this chapter includes such state agencies, boards, and commissions as may be designated by law that employ civil service employees, except the University of California, Hastings College of the Law, and the California State University.

(b) "Excluded employee," means all managerial employees, as defined in subdivision (e) of Section 3513, all confidential employees, as defined in subdivision (f) of Section 3513, and all supervisory employees, as defined in subdivision (g) of Section 3513, and all civil service employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Public Employment Relations Board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(c) "Supervisory employee organization" means an organization which represents members who are supervisory employees under subdivision (g) of Section 3513.

(d) "Excluded employee organization," means an organization which includes excluded employees of the state, as defined in subdivision (b), and which has as one of its primary purposes representing its members in employer-employee relations. Excluded employee organization includes supervisory employee organizations.

(e) "State employer," or "employer," for purposes of meeting and conferring on matters relating to supervisory employer-employee relations, means the Governor or his or her designated representatives.

3528. The Legislature hereby finds and declares that the rights and protections provided to excluded employees under this chapter constitute a matter of important concern. The Legislature further finds and declares that the efficient and effective administration of state programs depends upon the maintenance of high morale and the objective consideration of issues raised between excluded employees and their employer.

3529. (a) Except for supervisory employees as defined in subdivision (g) of Section 3513, excluded employees shall not hold any office in an employee organization which also represents nonexcluded employees.

(b) Excluded employees shall not participate in the handling of grievances on behalf of nonexcluded employees. Nonexcluded employees shall not participate in the handling of grievances on behalf of excluded employees.

(c) Excluded employees shall not participate in meet and confer sessions on behalf of nonexcluded employees. Nonexcluded employees shall not participate in meet and confer sessions on behalf of supervisory employees.

(d) The prohibition in subdivisions (b) and (c) shall not apply to the paid staff of an excluded or supervisory employee organization.

(e) Excluded employees shall not vote on questions of ratification or rejection of memoranda of understanding reached on behalf of nonexcluded employees.

3530. Excluded employee organizations shall have the right to represent their excluded members in their employment relations, including grievances, with the State of California. Excluded employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of excluded employees from membership. This section shall not prohibit any excluded employee from appearing on his or her own behalf or through his or her chosen representative in his or her employment relations and grievances with the State of California.

3531. Supervisory employees shall have the right to form, join, and participate in the activities of supervisory employee organizations of their own choosing for the purpose of representation on all matters of supervisory employer-employee relations, as set forth in Section 3532. Supervisory employees also shall have the right to refuse to join or participate in the activities of supervisory employee organizations and shall have the right to represent themselves individually in their employment relations with the public employer.

3532. The scope of representation for supervisory employees shall include all matters relating to employment conditions and supervisory employer-employee relations including wages, hours, and other terms and conditions of employment.

3533. Upon request, the state shall meet and confer with verified supervisory employee organizations representing supervisory employees. "Meet and confer" means that they shall consider as fully as the employer deems reasonable such presentations as are made by the verified supervisory employee organization on behalf of its supervisory members prior to arriving at a determination of policy or course of action.

3534. The state employer shall allow a reasonable number of supervisory public employee representatives of verified supervisory employee organizations reasonable time off without loss of compensation or other benefits when meeting and conferring with representatives of the state employer on matters within the scope of representation for supervisory employees.

3535. The Department of Personnel Administration may adopt rules and regulations for the administration of excluded employer-employee relations, including supervisory employer-employee relations, under these provisions. Such rules and regulations may include provisions for:

(a) Verifying that an excluded employee organization does in fact represent excluded employees.

(b) Verifying the official status of excluded employee organization officers and representatives.

(c) Access of excluded employee organization officers and representatives to work locations.

(d) Use of official bulletin boards and other means of communication by excluded employee organizations.

(e) Furnishing nonconfidential information pertaining to excluded employee relations to excluded employee organizations.

(f) Any other matters as are necessary to carry out the purposes of this chapter.

3536. The state may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the state and restricting these employees from representing any employee organization, which represents other employees of the state, on matters within the scope of representation. Except as specifically provided otherwise in this chapter, this section does not otherwise limit the right of excluded employees to be members of and to hold office in an excluded employee organization.

3537. Every excluded employee organization shall submit an annual registration statement on or before July 1 of each calendar year to the Department of Personnel Administration. The registration statement shall, at a minimum, list the name of the organization, its affiliations, headquarters, and other business addresses, its principal business telephone number, a list of principal officers and representatives, and a copy of its organization bylaws.

3538. The state employer and excluded employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against supervisory employees because of their exercise of their rights under this article.

3539. The enactment of this chapter shall not make Section 923 of the Labor Code applicable to state employees.

3539.5. The Department of Personnel Administration may adopt or amend regulations to implement employee benfits for those state officers and employees excluded from, or not otherwise subject to, the Ralph C. Dills Act.

These regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). These regulations shall become effective immediately upon filing with the Secretary of State.

CHAPTER 1523

An act to amend Sections 50052.5 and 50053 of the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 50052.5 of the Health and Safety Code is amended to read:

50052.5. (a) For any owner-occupied housing which receives assistance prior to January 1, 1991, and a condition of that assistance is compliance with this section, "affordable housing cost" with respect to lower income households shall not exceed 25 percent of gross income.

(b) For any owner-occupied housing which receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, "affordable housing cost" shall not exceed the following:

(1) For very low income households the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(2) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 30 percent of the gross income of the household.

(3) For moderate income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of area median income adjusted for family size appropriate for the unit. In addition, for any moderate income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 35 percent of the gross income of the household.

(c) The department shall, by regulation, adopt criteria defining, and providing for determination of, gross income, adjustments for family size appropriate to the unit, and housing cost for purposes of determining affordable housing cost under this section. These regulations may provide alternative criteria, where necessary to be

consistent with pertinent federal statutes and regulations governing federally assisted housing. The agency may, by regulation, adopt alternative criteria, and pursuant to subdivision (f) of Section 50462, alternative percentages of income may be adopted for agency-assisted housing development.

With respect to moderate and lower income households who are tenants of rental housing developments and members or shareholders of cooperative housing developments, or limited equity cooperatives "affordable housing cost" has the same meaning as affordable rent, as defined in Section 50053.

Regulations of the department shall also include a method for determining the maximum construction cost, mortgage loan, or sales price that will make housing available to an income group at affordable housing cost.

For purposes of this section, "area median income" shall mean area median income as published by the department pursuant to Section 50093.

For purposes of this section, "moderate income household" shall have the same meaning as "persons and families of moderate income" as defined in Section 50093.

For purposes of this section, and provided there are no pertinent federal statutes applicable to a project or program, "adjusted for family size appropriate to the unit" shall mean for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

SEC. 2. Section 50053 of the Health and Safety Code is amended to read:

50053. (a) For any rental housing development which receives assistance prior to January 1, 1991, and a condition of that assistance is compliance with this section, "affordable rent" with respect to lower income households shall not exceed the percentage of the gross income of the occupant person or household established by regulation of the department which shall not be less than 15 percent of gross income nor exceed 25 percent of gross income.

(b) For any rental housing development which receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, "affordable rent," including a reasonable utility allowance, shall not exceed:

(1) For very low income households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(2) For lower income households whose gross incomes exceed the maximum income for very low income households, the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those lower income households with gross incomes that exceed 60 percent of the area median income adjusted for family size, it shall be optional for

any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

(3) For moderate income households, the product of 30 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those moderate income households whose gross incomes exceed 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

(c) The department's regulation shall permit alternative percentages of income for agency-assisted rental and cooperative housing developments pursuant to regulations adopted under subdivision (f) of Section 50462. The department shall, by regulation, adopt criteria defining and providing for determination of gross income, adjustments for family size appropriate to the unit, and rent for purposes of this section. These regulations may provide alternative criteria, where necessary, to be consistent with pertinent federal statutes and regulations governing federally assisted rental and cooperative housing. The agency may, by regulation, adopt alternative criteria, and pursuant to subdivision (f) of Section 50462, alternative percentages of income may be adopted for agency-assisted housing developments.

For purposes of this section, "area median income," "adjustments for family size appropriate to the unit," and "moderate income household" shall have the same meaning as provided in Section 50052.5.

CHAPTER 1524

An act to amend Sections 444.5, 444.7, 444.9, and 444.11 of, and to add Section 444.12 to, the Health and Safety Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 444.5 of the Health and Safety Code is amended to read:

444.5. As a condition of participation in the pilot program, each applicant shall agree to provide the statistical data and patient information that the office deems necessary for effective evaluation, at such times as the office requires. It is the intent of the Legislature that the office shall develop procedures to assure the confidentiality of patient information, and shall only disclose patient information,

including names, as is necessary pursuant to this part or any other law.

The office may suspend or withdraw approval of pilot projects with notice but without hearing if the office determines that patient safety is or may be jeopardized. If a project is suspended or has approval withdrawn due in whole or in part to acts or omissions by persons licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, the office shall send a notice of the action to the appropriate licensing agency including the name and license number of the licensee. A pilot project shall have the right to appeal a suspension to the director of the office, but shall not resume performing freestanding cardiac catheterization services pending a favorable outcome of the appeal.

The office may suspend or withdraw approval of pilot projects for reasons other than patient safety, including any violations of the agreement to participate in the pilot program, but in those instances, the office shall give notice to the pilot project director and afford an opportunity to be heard.

SEC. 2. Section 444.7 of the Health and Safety Code is amended to read:

444.7. The office shall submit a report to the Legislature on the progress of the pilot program on or before July 1, 1993. The report shall include, but not be limited to, an evaluation of the cost, safety, and quality of care and quality of studies produced by the pilot projects. The report shall also include a recommendation as to whether freestanding cardiac catheterization should be continued, and if so, under what conditions. The report shall include a comparison of procedures in freestanding cardiac catheterization laboratories with those performed in general acute care hospitals.

SEC. 3. Section 444.9 of the Health and Safety Code is amended to read:

444.9. Any regulations the office adopts to implement this part shall be adopted as emergency regulations in accordance with Section 11346.1 of the Government Code, except that the regulations shall be exempt from the requirements of subdivisions (e), (f), and (g) of that section. The regulations shall be deemed to be an emergency for the purposes of Section 11346.1 of the Government Code and shall remain in effect until January 1, 1994, unless amended or repealed by the office.

SEC. 4. Section 444.11 of the Health and Safety Code is amended to read:

444.11. (a) This part shall remain in effect only until January 1, 1994, except as provided in subdivision (b), and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

(b) If the report submitted pursuant to Section 444.7 recommends creation of a permanent licensure category for freestanding cardiac catheterization laboratories, this part shall remain in effect only until legislation is enacted to create a supplemental service licensure

category, or January 1, 1996, whichever occurs first.

SEC. 5. Section 444.12 is added to the Health and Safety Code, to read:

444.12. If the report submitted pursuant to Section 444.7 recommends that a permanent licensure category should be created for freestanding cardiac catheterization laboratories, all designated pilot project sites shall continue in pilot project status under the authority of the office until legislation is enacted to create a supplemental service licensure category or January 1, 1996, whichever occurs first. All regulations of the office, reporting requirements, and monitoring procedures, including use of the technical advisory committee, shall remain in effect until legislation is enacted to create a supplemental service licensure category or January 1, 1996, whichever occurs first.

SEC. 6. Notwithstanding subdivision (a) of Section 2 of Chapter 1068 of the Statutes of 1986, the Office of Statewide Health Planning and Development may approve additional applications for freestanding cardiac catheterization laboratories from those applications the office has on file that it deems to be current, or the office may accept additional applications using one or more informal, but competitive, requests for proposals. Nothing in this act shall be construed to authorize the office to approve more than seven freestanding cardiac catheterization laboratories for inclusion under the pilot program authorized by Part 1.85 (commencing with Section 444) of Division 1 of the Health and Safety Code.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide the Office of Statewide Health Planning and Development sufficient time to report on the progress of the pilot program to test the safety and cost-effectiveness of performing cardiac catheterization in freestanding cardiac catheterization laboratories and to consider additional applications for these laboratories at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1525

An act to add Sections 14037.5 and 14075 to the Corporations Code, and to add Section 13542 to the Government Code, relating to small business, and making an appropriation therefor.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislatures finds and declares all of the following:

(a) California is subject to natural disasters, such as floods and earthquakes, that can have a devastating impact on the economies of affected local areas.

(b) Small businesses are the major source of jobs, innovation, and essential products and services for many local communities in the state.

(c) Small businesses often suffer disproportionate damages in these disasters because they are very sensitive to market conditions and changes in the costs of operating a business.

(d) Without immediate assistance, many viable businesses often have to cease or dramatically curtail their operations following a disaster.

(e) In many instances, federal assistance, such as Small Business Administration loans, is not made available in sufficient time to enable these businesses to continue operating and remain solvent.

(f) Without immediate interim financing and technical assistance many of these businesses will incur irreparable harm and ultimately fail.

(g) The failure of these businesses will have a deleterious effect on the economies of communities affected by the disaster and on the state's economy as a whole.

(h) Economic recovery from a natural disaster necessitates both short- and long-range programs, state assistance as well as local direction, and the effective use of existing public and private organizations dedicated to promoting job creation and economic development.

SEC. 2. Section 14037.5 is added to the Corporations Code, to read:

14037.5. The Director of Finance, with the approval of the Governor, may transfer moneys in the Special Fund for Economic Uncertainties to the Small Business Expansion Fund for use by the Office of Small Business in the Department of Commerce, in an amount necessary to make loan guarantees pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code.

SEC. 3. Section 14075 is added to the Corporations Code, to read:

14075. (a) A corporation may, in an area designated as a disaster area by the Governor, provide loan guarantees from funds allocated in Section 14037.5 to small businesses, small farms, nurseries, and agriculture-related enterprises which have suffered actual physical damage or significant economic injury as a result of the disaster.

(b) The Department of Commerce shall develop regulations which include maximum loan amounts, maximum terms of the loan guarantee and eligibility requirements under subdivision (a).

(c) Allocations pursuant to subdivision (a) shall be deemed to be for extraordinary emergency or disaster response operations costs incurred by the Office of Small Business.

SEC. 4. Section 13542 is added to the Government Code, to read:

13542. (a) The department shall administer the California Emergency Grant Assistance Program. Under this program, the department may make grants from the California Economic Development Grant and Loan Fund to cities and counties, small business development corporations, and small business development centers.

(b) The department may make grants to entities specified in subdivision (a) for all of the following purposes:

(1) To provide loan packaging assistance to small businesses which are attempting to qualify for federal Small Business Administration loans, state loans, or private bank loans, for disaster relief.

(2) To provide counseling and technical assistance to small businesses in the areas of business planning and management, financial analyses, and cost recovery strategy.

(3) To provide bilingual services to business owners and their employees to ensure adequate access to all available disaster relief programs.

(4) To provide for the preparation of long-range economic development plans and revitalization strategies by communities which suffer substantial economic disruption.

(5) To provide assistance to communities to develop marketing plans and disseminate information about economic and business opportunities in the region, such as tourism promotion and available business sites.

(c) The Director of Finance, with the approval of the Governor, may transfer moneys from the Special Fund for Economic Uncertainties to the California Economic Development Grant and Loan Fund, for use by the Department of Commerce, in an amount necessary to implement this section.

CHAPTER 1526

An act to amend Section 10086.5 of the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 10086.5 of the Insurance Code is amended to read:

10086.5. (a) The Legislature hereby finds and declares that the continued regulation of the business practices of insurers and their products is in the interest of the citizens of the state and that the control and limitation of unlawful nonrenewal, rejection, or cancellation of residential property insurance after an offer of earthquake coverage is accepted is an essential component of that regulation which is necessary to effectuate an adequate and complete system and regulation of insurer and producer business practices. The Legislature finds that this chapter continues to provide critical protection to insureds in this state from the numerous consequences that would occur in the absence of that regulation.

(b) An insurer shall not refuse to renew, reject, or cancel a policy of residential property insurance after an offer of earthquake coverage is accepted solely because the insured has accepted that offer of earthquake coverage, except in cases in which the policy is terminated by the named insured.

(c) Underwriting standards applicable to residential property insurance shall not be applied in a discriminatory fashion against any person who accepts or elects to continue earthquake coverage.

CHAPTER 1527

An act to amend Section 1270 of, and to add Section 646.9 to, the Penal Code, relating to crime.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 646.9 is added to the Penal Code, to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear of death or great bodily injury is guilty of the crime of stalking, punishable by

imprisonment in a county jail for not more than one year or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) Any person who violates subdivision (a) when there is a temporary restraining order or an injunction, or both, in effect prohibiting the behavior described in subdivision (a) against the same party, is punishable by imprisonment in a county jail for not more than one year or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(c) A second or subsequent conviction occurring within seven years of a prior conviction under subdivision (a) against the same victim, and involving an act of violence or "a credible threat" of violence, as defined in subdivision (e), is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(d) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(e) For the purposes of this section, "a credible threat" means a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause great bodily injury to, a person as defined in Section 12022.7.

This section shall not apply to conduct which occurs during labor picketing.

SEC. 2. Section 1270 of the Penal Code is amended to read:

1270. (a) Any person, who has been arrested for, or charged with, an offense other than a capital offense may be released on his or her own recognizance by a court or magistrate who could release a defendant from custody upon the defendant giving bail, including a defendant arrested upon an out-of-county warrant, provided that a defendant who is in custody and is arraigned on a complaint alleging an offense which is a misdemeanor, and a defendant who appears before a court or magistrate upon an out-of-county warrant arising out of a case involving only misdemeanors, shall be entitled to an own recognizance release unless the court makes a finding upon the record that an own recognizance release will not reasonably assure the appearance of the defendant as required. In this event the court shall then set bail and specify the conditions, if

any, whereunder the defendant shall be released. If the complaint or the out-of-county warrant arises out of a case alleging a misdemeanor offense in which the commission, attempted commission, or conspiracy to commit the offense involves the possession or use of a firearm, or in which there is a violation of Chapter 9 (commencing with Section 240) of Title 8 of Part 1, willful disobedience of any process or order lawfully issued by any court in violation of Section 166, or Section 186.22, 262, 273a, 273d, 273.5, 273.6, 368, 417, 422, 422.6, 646.9, 647.6, 653k, or 653m, Section 1275 shall apply in considering whether to grant or deny a release under this section.

(b) Article 9 (commencing with Section 1318) shall apply to any person who is released pursuant to this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1528

An act to amend Section 1656.1 of, and to repeal Section 1656.2 of, the Civil Code, and to amend Sections 6591.5, 6797, 7401, 7892, 8101, 8714, 8951, 9012, 11512, 32372, 38552, 43432, 45552, and 50129 of, and to add Section 8106.1 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 1656.1 of the Civil Code is amended to read:

1656.1. (a) Whether a retailer may add sales tax reimbursement to the sales price of the tangible personal property sold at retail to a purchaser depends solely upon the terms of the agreement of sale. It shall be presumed that the parties agreed to the addition of sales tax reimbursement to the sales price of tangible personal property sold at retail to a purchaser if:

(1) The agreement of sale expressly provides for such addition of sales tax reimbursement;

(2) Sales tax reimbursement is shown on the sales check or other proof of sale; or

(3) The retailer posts in his or her premises in a location visible

to purchasers, or includes on a price tag or in an advertisement or other printed material directed to purchasers, a notice to the effect that reimbursement for sales tax will be added to the sales price of all items or certain items, whichever is applicable.

(b) It shall be presumed that the property, the gross receipts from the sale of which is subject to the sales tax, is sold at a price which includes tax reimbursement if the retailer posts in his or her premises, or includes on a price tag or in an advertisement (whichever is applicable) one of the following notices:

(1) "All prices of taxable items include sales tax reimbursement computed to the nearest mill."

(2) "The price of this item includes sales tax reimbursement computed to the nearest mill."

(c) (1) The State Board of Equalization shall prepare and make available for inspection and duplication or reproduction a sales tax reimbursement schedule which shall be identical with the following tables up to the amounts specified therein:

4¾ percent

Price	Tax
.01– .10	.00
.11– .31	.01
.32– .52	.02
.53– .73	.03
.74– .94	.04
.95–1.15	.05

5 percent

Price	Tax
.01– .09	.00
.10– .29	.01
.30– .49	.02
.50– .69	.03
.70– .89	.04
.90–1.09	.05

5¼ percent

Price	Tax
.01– .09	.00
.10– .28	.01
.29– .47	.02
.48– .66	.03
.67– .85	.04
.86–1.04	.05

5½ percent

Price	Tax
.01– .09	.00
.10– .27	.01

.28– .45	.02
.46– .63	.03
.64– .81	.04
.82– .99	.05
1.00–1.18	.06

5¾ percent

Price	Tax
.01– .08	.00
.09– .26	.01
.27– .43	.02
.44– .60	.03
.61– .78	.04
.79– .95	.05
.96–1.13	.06

6 percent

Price	Tax
.01– .08	.00
.09– .24	.01
.25– .41	.02
.42– .58	.03
.59– .74	.04
.75– .91	.05
.92–1.08	.06

6¼ percent

Price	Tax
.01– .07	.00
.08– .23	.01
.24– .39	.02
.40– .55	.03
.56– .71	.04
.72– .87	.05
.88–1.03	.06

6½ percent

Price	Tax
.01– .07	.00
.08– .23	.01
.24– .38	.02
.39– .53	.03
.54– .69	.04
.70– .84	.05
.85– .99	.06
1.00–1.15	.07

6¾ percent

Price	Tax
.01– .07	.00
.08– .22	.01
.23– .37	.02
.38– .51	.03
.52– .66	.04
.67– .81	.05
.82– .96	.06
.97–1.11	.07

7 percent

Price	Tax
.01– .07	.00
.08– .21	.01
.22– .35	.02
.36– .49	.03
.50– .64	.04
.65– .78	.05
.79– .92	.06
.93–1.07	.07

7¼ percent

Price	Tax
.01– .06	.00
.07– .20	.01
.21– .34	.02
.35– .48	.03
.49– .62	.04
.63– .75	.05
.76– .89	.06
.90–1.03	.07

7½ percent

Price	Tax
.01– .06	.00
.07– .19	.01
.20– .33	.02
.34– .46	.03
.47– .59	.04
.60– .73	.05
.74– .86	.06
.87– .99	.07
1.00–1.13	.08

(2) Reimbursement on sales prices in excess of those shown in the schedules may be computed by applying the applicable tax rate to the sales price, rounded off to the nearest cent by eliminating any fraction less than one-half cent and increasing any fraction of

one-half cent or over to the next higher cent.

(3) If sales tax reimbursement is added to the sales price of tangible personal property sold at retail, the retailer shall use a schedule provided by the board, or a schedule approved by the board.

(d) The presumptions created by this section are rebuttable presumptions.

SEC. 2. Section 1656.2 of the Civil Code is repealed.

SEC. 3. Section 6591.5 of the Revenue and Taxation Code is amended to read:

6591.5. (a) "Modified adjusted rate per annum" means the adjusted annual rate established pursuant to subdivision (c), plus three percentage points.

(b) "Modified adjusted rate per month, or fraction thereof" means the modified adjusted rate per annum divided by 12.

(c) The rate established under this section shall be determined in accordance with the provisions of Section 6621 of the Internal Revenue Code, except that:

(1) The overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate determined under Section 6621(a)(2) of the Internal Revenue Code.

(2) The determination specified in Section 6621(b) shall be modified to be determined semiannually as follows:

(A) The rate for January shall apply for the following July 1 to December 31, inclusive.

(B) The rate for July shall apply for the following January 1 to June 30, inclusive.

(d) For purposes of this part, and any other provision of law referencing this method of computation, in computing the amount of any interest required to be paid by the state or by the taxpayer, or any other amount determined by reference to that amount of interest, that interest and that amount shall be computed as simple interest, not compound interest.

SEC. 4. Section 6797 of the Revenue and Taxation Code is amended to read:

6797. Notice of the sale and the time and place thereof shall be given to the delinquent person and to all persons who have an interest of record in the property in writing at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the person, in case of a sale for use taxes due, at his or her last known address or place of business, and, in case of a sale for sales taxes due, at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not,

in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including taxes, interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due is paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

SEC. 5. Section 7401 of the Revenue and Taxation Code is amended to read:

7401. (a) The provisions of this part requiring the payment of license taxes do not apply to any of the following:

(1) Natural gasoline distributed to a duly licensed distributor under such regulations as the board may prescribe.

(2) Motor vehicle fuel exported from this state by the distributor or delivered by the distributor to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.

(3) Motor vehicle fuel distributed, or delivered on the order of the owner, to a distributor who has furnished bond as prescribed by Sections 7486 and 7487 of not less than fifty thousand dollars ($50,000), nor more than five hundred thousand dollars ($500,000), and who has established to the satisfaction of the board that this bond, together with property to which the lien imposed by Section 7872 attaches, is sufficient security to assure payment of all license taxes as they may become due to the state from him or her under this part.

(4) Motor vehicle fuel sold to the United States armed forces for use in ships or aircraft, or for use outside this state.

(5) Motor vehicle fuel distributed to any licensed distributor, or to any licensed broker who has furnished bond in the form and amount required of distributors under Article 2.1 (commencing with Section 7486) of Chapter 4, for sale to the United States armed forces for use in ships or aircraft or use outside this state. Notwithstanding any other provisions of this part, the receiving of motor vehicle fuel in this state from a licensed distributor and the sale and delivery of the fuel to the United States armed forces pursuant to this subdivision shall not constitute a broker or distributor under this part.

(6) Motor vehicle fuel sold by credit card certified by the United States Department of State to any consulate officer or consulate employee of a foreign government who is not engaged in any private occupation for gain within this state, who uses the motor vehicle fuel

in a vehicle which is registered with the United States Department of State, and whose government has done either of the following:

(A) Entered into a treaty with the United States providing for the exemption of its representatives from national, state, and municipal taxes.

(B) Granted a similar exemption to representatives of the United States.

(b) Every distributor claiming an exemption shall report the exports, sales or distributions to the board in such detail as the board may require; otherwise the exemption granted in this section shall be null and void and all the fuel shall be considered distributed in this state subject fully to the provisions of this part.

SEC. 6. Section 7892 of the Revenue and Taxation Code is amended to read:

7892. Notice of the sale and the time and place thereof shall be given to the delinquent distributor and to all persons who have an interest of record in the property in writing at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the distributor or other person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount of the taxes, penalties, interest, and costs, the name of the distributor, and the further statement that unless the taxes, penalties, interest, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

SEC. 7. Section 8101 of the Revenue and Taxation Code is amended to read:

8101. The following persons who have paid a license tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax:

(a) Any person who buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state, except vehicles subject to identification under

Division 16.5 (commencing with Section 38000) of the Vehicle Code, which are used for recreational purposes or are rented or leased for recreational purposes, and, on and after July 1, 1974, except motor vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code while engaged in off-highway recreational use.

(b) Any person who exports the motor vehicle fuel for use outside of this state. Motor vehicle fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the motor vehicle fuel becomes subject to tax as an "import" under the laws of the destination state.

(c) Any person who sells the motor vehicle fuel to the armed forces of the United States for use in ships or aircraft or for use outside this state, under circumstances that would have entitled him or her to an exemption from the payment of the license tax under Section 7401 had he or she been the distributor of this fuel.

(d) Any person who buys and uses the motor vehicle fuel in any construction equipment which is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(e) Any distributor who sells motor vehicle fuel which is sold to any consulate officer or consulate employee under circumstances which would have entitled the distributor to an exemption under paragraph (6) of subdivision (a) of Section 7401 if the distributor had sold the motor vehicle fuel directly to the consulate officer or consulate employee.

SEC. 7.5. Section 8106.1 is added to the Revenue and Taxation Code, to read:

8106.1. In lieu of the collection and refund of the tax on motor vehicle fuel sold to a consulate officer or consulate employee of a foreign government by a licensed distributor who would be entitled to claim a refund under subdivision (e) of Section 8101, a credit may be given the distributor upon his or her tax return and the determination of the amount of his or her tax shall be in accordance with any rules and regulations which the board may prescribe.

SEC. 8. Section 8714 of the Revenue and Taxation Code is amended to read:

8714. Whenever any vendor fails to comply with any provision of this part or any rule or regulation of the board prescribed and adopted under this part, relating to fuel vendors, the board upon hearing, after giving the vendor at least 10 days' notice in writing specifying the time and place of hearing and requiring the vendor to show cause why his or her permit should not be revoked, may revoke or suspend the permit held by the vendor. The board shall give to the person written notice of the suspension or revocation of his or her permit. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The board shall not issue a new permit to a vendor whose permit has been revoked or reinstate the permit of a vendor

whose permit has been suspended or revoked unless it is satisfied that he or she will comply with the provisions of this part and the rules and regulations of the board, and the vendor pays to the board a fee of fifty dollars ($50) for the reinstatement or issuance of a permit. The fee shall not be subject to refund except as provided in Section 9151.

SEC. 9. Section 8951 of the Revenue and Taxation Code is amended to read:

8951. The board, whenever it deems it necessary to ensure compliance with this part or any rule or regulation adopted under this part, may require any user or vendor to deposit with it such security as it may determine. The board may sell the security at public sale if it becomes necessary so to do in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the manner prescribed for service of notice of a deficiency determination. Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price thereof. Upon any sale, any surplus above the amount due shall be returned to the person who deposited the security.

SEC. 10. Section 9012 of the Revenue and Taxation Code is amended to read:

9012. Notice of the sale and the time and place thereof shall be given in writing to the delinquent user and to all persons who have an interest of record in the property seized at least 20 days before the date set for the sale. The notice shall be personally served or enclosed in an envelope addressed to the user or other person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including tax, penalties, interest, and costs, the name of the user, and the further statement that unless the amount is paid on or before the time fixed in the notice of sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

SEC. 11. Section 11512 of the Revenue and Taxation Code is amended to read:

11512. Notice of the sale and the time and place thereof shall be given to the delinquent person and to all persons who have an interest of record in writing at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the taxpayer or other person at his or her last known address or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including taxes, interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due is paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

SEC. 12. Section 32372 of the Revenue and Taxation Code is amended to read:

32372. Notice of the sale, and the time and place thereof, shall be given to the delinquent taxpayer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the taxpayer or other person at his or her last known residence or place of business in this state. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including taxes, interest, penalties,

and costs, the name of the taxpayer, and the further statement that unless the amount due is paid on or before the time fixed in the notice for the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

SEC. 13. Section 38552 of the Revenue and Taxation Code is amended to read:

38552. Notice of the sale and the time and place thereof shall be given to the delinquent person and to all persons who have an interest of record in the property in writing at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the taxpayer or other person at his or her last known address or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including taxes, interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due is paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

SEC. 14. Section 43432 of the Revenue and Taxation Code is amended to read:

43432. Notice of the sale, and the time and place thereof, shall be given to the delinquent taxpayer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the taxpayer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and depositing it in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property

is to be sold if it is to be sold in a city, or, if not to be sold in a city, one public place in the county in which the interest to the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including taxes, interest, penalties, and costs, the name of the taxpayer, and the further statement that unless the amount due is paid on or before the time fixed in the notice for the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

SEC. 15. Section 45552 of the Revenue and Taxation Code is amended to read:

45552. Notice of the sale, and the time and place thereof, shall be given to the delinquent fee payer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the fee payer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and depositing it in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest to the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including fees, interest, penalties, and costs, the name of the fee payer, and the further statement that unless the amount due is paid on or before the time fixed in the notice of the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

SEC. 16. Section 50129 of the Revenue and Taxation Code is amended to read:

50129. Notice of the sale and the time and place thereof, shall be given to the delinquent fee payer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the fee payer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and depositing it in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the

Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is located if any part thereof is situated in a city or if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest to the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount of the fees, penalties, and costs, the name of the fee payer, and the further statement that unless the fees, penalties, and costs are paid on or before the time fixed in the notice of the sale, the property, or so much of the property as may be necessary, will be sold in accordance with law and the notice.

CHAPTER 1529

An act to amend Section 17537.1 of, to amend and renumber Section 17537.2 of, and to add Section 17537.2 to, the Business and Professions Code, and to amend Sections 1812.300, 1812.301, 1812.302, 1812.303, and 1812.304 of, to amend and renumber Sections 1812.307 and 1812.308 of, and to add Sections 1812.307, 1812.308, and 1812.309 to, the Civil Code, relating to consumers.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 17537.1 of the Business and Professions Code is amended to read:

17537.1. (a) It is unlawful for any person, or an employee, agent or independent contractor employed or authorized by that person, by any means, as part of an advertising plan or program, to offer any incentive as an inducement to the recipient to visit a location, attend a sales presentation, or contact a sales agent in person, by telephone or by mail, unless the offer clearly and conspicuously discloses in writing, in readily understandable language, all of the information required in paragraphs (1) and (2). If the offer is not initially made in writing, the required disclosures shall be received by the recipient in writing prior to any scheduled visit to a location, sales presentation, or contact with a sales agent. For purposes of this section, the term "incentive" means any item or service of value, including, but not limited to, any prize, gift, money, or other tangible property.

(1) The following disclosures shall appear on the front (or first) page of the offer:

(A) The name and street address of the owner of the real or personal property or the provider of the services which are the subject of the visit, sales presentation, or contact with a sales agent. If the offer is made by an agent or independent contractor employed or authorized by the owner or provider, or is made under a name other than the true name of the owner or provider, the name of the owner or provider shall be more prominently and conspicuously displayed than the name of the agent, independent contractor, or other name.

(B) A general description of the business of the owner or provider identified pursuant to subparagraph (A), and the purpose of any requested visit, sales presentation, or contact with a sales agent, which shall include a general description of the real or personal property or services which are the subject of the sales presentation and a clear statement, if applicable, that there will be a sales presentation and the approximate duration of the visit and sales presentation.

(C) If the recipient is not assured of receiving any particular incentive, a statement of the odds of receiving each incentive offered or, in the alternative, a clear statement describing the location in the offer where the odds can be found. The odds shall be stated in whole Arabic numbers in a format such as: "1 chance in 100,000" or "1:100,000." The odds and, where applicable, the alternative statement describing their location, shall be printed in a type size that is at least equal to that used for the standard text on the front (or first) page of the offer.

(D) A clear statement, if applicable, that the offer is subject to specific restrictions, qualifications, and conditions and a statement describing the location in the offer where the restrictions, qualifications, and conditions may be found. Both statements shall be printed in a type size that is at least equal to that used for the standard text on the front (or first) page of the offer.

(2) The following disclosures shall appear in the offer, but need not appear on the front (or first) page of the offer:

(A) Unless the odds are disclosed on the front (or first) page of the offer, a statement of the odds of receiving each incentive offered, printed in the size and format set forth in subparagraph (C) of paragraph (1).

(B) All restrictions, qualifications, and other conditions which must be satisfied before the recipient is entitled to receive the incentive, including but not limited to:

(i) Any deadline by which the recipient must visit the location, attend the sales presentation, or contact the sales agent in order to receive an incentive.

(ii) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married both husband and wife must be present in order to receive

the incentive. Any financial qualifications shall be stated with a specificity sufficient to enable the recipient to reasonably determine his or her eligibility.

(C) A statement that the owner or provider identified pursuant to subparagraph (A) of paragraph (1) reserves the right to provide a raincheck, or a substitute or like incentive, if those rights are reserved.

(D) A statement that a recipient who receives an offered incentive may request and will receive evidence showing that the incentive provided matches the incentive randomly or otherwise selected for distribution to that recipient.

(E) All other rules, terms, and conditions of the offer, plan, or program.

(b) It is unlawful for any person making an offer subject to subdivision (a), or any employee, agent, or independent contractor employed or authorized by that person, to offer any incentive when the person knows or has reason to know that the offered item will not be available in a sufficient quantity based upon the reasonably anticipated response to the offer.

(c) It is unlawful for any person making an offer subject to subdivision (a), or any employee, agent, or independent contractor employed or authorized by that person, to fail to provide any offered incentive which any recipient who has responded to the offer in the manner specified therein, who has performed the requirements disclosed therein, and who has met the qualifications described therein, is entitled to receive, unless the offered incentive is not reasonably available and the offer discloses the reservation of a right to provide a raincheck, or a like or substitute incentive, if the offered incentive is unavailable.

(d) If the person making an offer subject to subdivision (a) is unable to provide an offered incentive because of limitations of supply, quantity, or quality that were not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall inform the recipient of the recipient's right to receive a raincheck for the incentive offered, unless the person making the offer knows or has reasonable basis for knowing that the incentive will not be reasonably available and shall inform the recipient of the recipient's right to at least one of the following additional options:

(1) The person making the offer will provide a like incentive of equivalent or greater retail value or a raincheck therefor.

(2) The person making the offer will provide a substitute incentive of equivalent or greater retail value.

(3) The person making the offer will provide a raincheck for the like or substitute incentive.

(e) If a raincheck is provided, the person making an offer subject to subdivision (a) shall, within a reasonable time, and in no event later than 80 days, deliver the agreed incentive to the recipient's address without additional cost or obligation to the recipient, unless the incentive for which the raincheck is provided remains

unavailable because of limitations of supply, quantity, or quality not reasonably foreseeable or controllable by the person making the offer. In that case, the person making the offer shall, not later than 30 days after the expiration of the 80 days, deliver a like incentive of equal or greater retail value or, if an incentive is not reasonably available to the person making the offer, a substitute incentive of equal or greater retail value.

(f) Upon the request of a recipient who has received or claims a right to receive any offered incentive, the person making an offer subject to subdivision (a) shall furnish to the person sufficient evidence showing that the incentive provided matches the incentive randomly or otherwise selected for distribution to that recipient.

(g) It is unlawful for any person making an offer subject to subdivision (a), or any employee, agent, or independent contractor employed or authorized by that person, to:

(1) Use any printing styles, graphics, layouts, text, colors, or formats on envelopes or on the offer which, implies, creates an appearance, or would lead a reasonable person to believe, that the offer originates from or is issued by or on behalf of a government or public agency, public utility, public organization, insurance company, credit reporting agency, bill collecting company or law firm, unless the same is true.

(2) Misrepresent the size, quantity, identity, value, or qualities of any incentive.

(3) Misrepresent in any manner the odds of receiving any particular incentive.

(4) Represent directly or by implication that the number of participants has been significantly limited or that any person has been selected to receive a particular incentive unless that is the fact.

(5) Label any offer a notice of termination or notice of cancellation.

(6) Misrepresent, in any manner, the offer, plan, program or the affiliation, connection, association, or contractual relationship between the person making the offer and the owner or provider, if they are not the same.

(h) If the major incentives are awarded or given at random, by the assignment of a number to the incentives, that number shall be actually assigned by the party contractually responsible for doing so. The person making an offer subject to subdivision (a) hereof, or the agent, employee, or independent contractor employed or authorized by that person, if any, shall maintain, for a period of one year after the date the offer is made, the records that show that the winning numbers or opportunity to receive the major incentives have been deposited in the mail or otherwise made available to recipients in accordance with the odds statement provided pursuant to subparagraph (C) of paragraph (1) of subdivision (a) hereof. The records shall be made available to the Attorney General within 30 days after written request therefor. Postal receipt records, affidavits of mailing, or a list of winners or recipients of the major incentives

shall be deemed to satisfy the requirements of this section.

SEC. 2. Section 17537.2 of the Business and Professions Code is amended and renumbered to read:

17537.4. If the person making an offer subject to Section 17537 or to subdivision (a) of Section 17537.1, or any employee, agent, or independent contractor employed or authorized by that person, violates any provision of Section 17537, 17537.1, or 17537.2, the recipient of the offer who is damaged by the violation may bring a civil action against the person making the offer for, and may be awarded, treble damages. The court may award reasonable attorneys' fees to the prevailing party.

SEC. 3. Section 17537.2 is added to the Business and Professions Code, to read:

17537.2. The following, when used as part of an advertising plan or program defined in Section 17537.1, are deceptive and constitute unfair trade practices:

(a) When, in order to utilize the incentive, the recipient is requested to pay any money to any person or entity named or referred to in the offer, or to purchase, rent, or otherwise pay that person or entity for any product or service including a deposit, whether returnable or not, whether payment is for an item, a service, shipping, handling, insurance or payment for anything.

Notwithstanding the preceding paragraph, when the offered incentive is a certificate or coupon redeemable for transportation, accommodations, recreation, vacation, entertainment, or like services, the offer may place a condition on the use of the incentive which requires the recipient to pay directly to the transportation company, the accommodation, recreation, vacation or entertainment facility, or similar direct provider of like services, a refundable deposit, not to exceed fifty dollars ($50), to reserve space availability or admission, only if the deposit shall be returned in United States dollars immediately upon the recipient's arrival at the location of the provider to whom the recipient paid the deposit. If the incentive is such a certificate or coupon, and if government-imposed taxes directly related to the service being provided are not included in the incentive, the offer itself, in close proximity to the description of the incentive which is evidenced by the certificate or coupon, shall disclose those government-imposed taxes which will be the recipient's responsibility and the approximate dollar amount of those taxes. A deposit from the recipient may be collected to cover the cost of those goverment-imposed taxes.

(b) Stating or implying in the offer that the recipient is one of a selected group to receive a particular incentive or one or more of a group of incentives, without clearly and conspicuously disclosing in close proximity to the statement or implied statement of selection the total number of persons in that select group or the odds of receiving the incentive or incentives. Statements of selection which require such disclosure include such phrases as "you are a finalist," "we are sending this to a limited number of people," "either you or

another named person have won the major prize," "if you do not respond, your incentive will be given to someone else."

(c) Stating or implying in the offer that the recipient is likely to receive one or more of the offered incentives because other named people have already received other named incentives, unless the offer clearly and conspicuously discloses in close proximity to the statement the recipient's odds of receiving the identified incentive.

(d) When the solicitation states or implies that the recipient is likely to receive an incentive which has a normal retail price which is higher than that of another named incentive unless that statement is true. For purposes of this section, a list of incentives implies that the incentives are in descending or ascending order of value unless the solicitation clearly and conspicuously negates the implication in close proximity to the list.

(e) Describing an incentive or incentives in an untrue or misleading manner. Untrue or misleading descriptions include those which imply that the incentive being offered is of greater fair market value or of a different kind or nature than a recipient would be led to believe from a reasonable reading of the offer, or which lists the recipient's name in close proximity to a specific incentive unless the offer clearly and conspicuously discloses immediately next to or immediately under or above the recipient's name the recipient's odds of receiving the specific incentive.

SEC. 4. Section 1812.300 of the Civil Code is amended to read:

1812.300. For the purposes of this title:

(a) "Membership camping operator" means any enterprise, other than one that is tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, that has as one of its purposes the ownership or operation of campgrounds which include or may include use of camping sites, that solicits membership paid for by a fee or periodic payments, such as annual dues, and the contractual members are the primary intended users. "Membership camping operator" does not include camping or recreational trailer parks, as defined in Section 18215 of the Health and Safety Code, which are open to the general public and which contain camping sites rented for a per use fee, or a "mobilehome park," as defined in either Section 798.4 of the Civil Code or Section 18214 of the Health and Safety Code.

As used in this title, "seller" means membership camping operator.

(b) "Membership camping contract" means an agreement offered or sold within the State of California by a membership camping operator or membership camping broker evidencing a purchaser's right or license to use for more than 14 days in a year, the campgrounds of a membership camping operator and includes a membership which provides for this use.

(c) "Camping site" means a space designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, or other similar device used for camping.

(d) "Offer" means any solicitation reasonably designed to result

in entering into a membership camping contract.

(e) "Person" means any individual, corporation, partnership, trust, association, or other organization other than a government or a subdivision thereof.

(f) "Purchaser" means a person who enters into a membership camping contract and thereby obtains the right to use the campgrounds of a membership camping operator.

(g) "Sale" or "sell" means entering into, or other disposition, of a membership camping contract for value. The term "value" does not include a reasonable fee to offset the administrative costs of transfer of a membership camping contract.

(h) "Campground" means real property within this state owned or operated by a membership camping operator and designated in whole or in part by the membership camping operator as available for camping or outdoor recreation by purchasers of membership camping contracts.

(i) "Blanket encumbrance" means any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, or other financing lien or encumbrance granted by the membership camping operator or affiliate which secures or evidences the obligation to pay money or to sell or convey any campgrounds made available to purchasers by the membership camping operator or any portion thereof, and which authorizes, permits, or requires the foreclosure or other disposition of the campground.

(j) "Nondisturbance agreement" means an instrument in recordable form by which the holder of a blanket encumbrance agrees to all of the following:

(1) The holder's rights in any campground made available to purchasers, prior or subsequent to the agreement, by the membership camping operator shall be subordinate to the rights of purchasers from and after the recordation of the nondisturbance agreement.

(2) The holder and all successors and assignees of the holder, and any person who acquires the campground through foreclosure or by deed in lieu of foreclosure of the blanket encumbrance shall take the campground subject to the rights of purchasers.

(3) The holder or any successor acquiring the campground through the blanket encumbrance shall not use or cause the campground to be used in a manner which would materially prevent purchasers from using or occupying the campground in a manner contemplated by the purchasers' membership camping contracts. However, the holder shall have no obligation to, and no liability for failure to assume the responsibilities or obligations of, the membership camping operator under the membership camping contracts.

(k) "Membership camping contract broker" means a person who, for compensation, resells or offers to resell a membership camping contract to a new purchaser on behalf of a prior purchaser.

Membership camping contract broker does not include a membership camping operator or its employees or agents.

SEC. 5. Section 1812.301 of the Civil Code is amended to read:

1812.301. The membership camping contracts and persons covered by this title shall be subject to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 and Article 1 (commencing with Section 17500) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code and the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

SEC. 6. Section 1812.302 of the Civil Code is amended to read:

1812.302. A membership camping operator shall provide to a purchaser the following written disclosures in any format which clearly communicates the following reasonably current information before the purchaser signs a membership camping contract, or gives any money or thing of value for the purchase of a membership camping contract. The written disclosures shall be included in or attached to the contract before the time the contract is signed. The following information shall be updated once a year.

(a) The name and address of the membership camping operator and any material affiliate membership camping operator.

(b) A brief description of the membership camping operator's experience in the membership camping business, including the number of years the operator has been in the membership camping business; a brief description of the past five years' business experience of the chairman, the president and chief executive officer, and if other than the foregoing, the person in charge of marketing of the membership camping operator, or persons in comparable positions in noncorporate operators, including the number of other membership camping operators with which the executive has been associated and the length of time with each.

(c) A brief description of the nature of the purchaser's right or license to use the membership camping operator's property or facilities.

(d) The location of each of the membership camping operator's campgrounds and a brief description for each campground of the significant facilities then available for use by purchasers and those which are represented to purchasers as being planned, together with a brief description of any significant facilities that are or will be available to nonpurchasers or nonmembers.

"Significant facilities" shall include, but are not limited to, each of the following: the number of campsites, in each campground; the number of campsites in each campground with full or partial hookups; swimming pools; tennis courts; recreation buildings; restrooms and showers; laundry rooms; trading posts; or grocery stores. "Partial hookups" mean those hookups with at least one of the following connections: electricity, water, or sewer connections.

Following such description there shall appear in 10-point bold type the following disclosure:

NOTICE: PURCHASE A MEMBERSHIP CAMPING CONTRACT ONLY ON THE BASIS OF EXISTING FACILITIES. CONSTRUCTION OF PLANNED FACILITIES IS SOMETIMES DEFERRED OR REVISED FOR A VARIETY OF REASONS. SHOULD THE SALESPERSON DESCRIBE A SIGNIFICANT FACILITY WHICH IS NEITHER LISTED AS EXISTING NOR PLANNED, TELEPHONE COLLECT OR TOLL FREE DURING WEEKDAY BUSINESS HOURS TO [insert headquarter's telephone number] TO VERIFY THE OPERATOR'S PLAN FOR SUCH A FACILITY.

(e) A brief description of the membership camping operator's ownership of, or other right to use, the campgrounds represented to be available for use by purchasers, together with the duration and expiration date of any lease, license, franchise, or reciprocal agreement entitling the membership camping operator to use the campgrounds, and any material provisions of any agreements, land use permits, or operating licenses which could materially restrict a purchaser's use of the campgrounds under the terms of the purchaser's camping contract.

(f) A summary or copy of the rules, restrictions, or covenants regulating the purchaser's use of the membership camping operator's properties, including a statement of whether and how the rules, restrictions, or covenants may be changed.

(g) A brief description of all payments of a purchaser under a membership camping contract, including initial fees and any further fees, charges, or assessments, together with any provisions for changing the payments.

(h) A description of any restraints on the transfer of the membership camping contract.

(i) A brief description of the policies relating to the availability of camping sites and whether reservations are required.

(j) A brief description of any grounds for forfeiture of a purchaser's membership camping contract.

(k) A copy of the membership camping contract form.

SEC. 7. Section 1812.303 of the Civil Code is amended to read:

1812.303. (a) A membership camping contract shall be written in the same language as that principally used in any oral sales presentation (e.g., Spanish). A membership camping contract shall be dated, signed by the purchaser, and contain, in immediate proximity to the space reserved for the signature of the purchaser, a conspicuous statement in a size equal to at least 10-point bold type, as follows: "You, the purchaser, may cancel this contract at any time prior to midnight of the third business day after the date of the transaction. See an explanation of this right as set forth in this contract or on the attached notice of cancellation form." In the alternative the notice of cancellation as set forth in subdivision (b) may be placed in immediate proximity to the signature line of the contract in lieu of the foregoing statement.

(b) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the contract and easily detachable. In the alternative, the seller may include all of the cancellation information on the contract and provide the consumer with a carbon copy which may be retained after cancellation. Both shall contain, in type of at least 10-point, the following statement written in the same language as used in the contract:

"Notice of Cancellation"

"You may cancel this contract, without any penalty or obligation, within three business days from the date the contract is executed.

"To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice or a copy of this contract if it contains the cancellation instructions, or any other written notice, or send a telegram to

_____ , at
(Name of seller)

_____
(Address of seller's place of business)

not later than midnight of _____.
(Date)

I hereby cancel this transaction _____.
(Date)

_____
(Purchaser's signature)

"With the notice of cancellation, or separately if a telegram is sent, you must return the original membership camping contract, membership card and all other evidence of membership to the seller. You should promptly return these documents with the notice of cancellation, or separately if a telegram is sent. Failure to send the documents promptly could delay your refund. You should retain for your records one copy of the cancellation notice, or a carbon of the contract when it provides the cancellation information, or other writing showing intent to cancel. Mailing by ordinary mail is adequate but certified mail return receipt requested is recommended."

(c) On the date of purchase the membership camping operator shall provide the purchaser with a copy of the contract and duplicate of the notice of cancellation. The membership camping operator shall inform the purchaser orally of the right to cancel at the time the contract is executed.

(d) Within 20 days after the membership camping operator receives a notice of cancellation, the membership camping contract, the membership card and all other evidence of purchase or membership, the membership camping operator shall refund to the

purchaser any sums paid as a deposit, downpayment or other payment therefor. If the purchaser does not promptly return the evidence of membership, the 20-day period shall be extended until such evidence of membership is returned.

(e) Until the membership camping operator has complied with this section, the purchaser shall have the right to cancel the contract.

(f) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.

SEC. 8. Section 1812.304 of the Civil Code is amended to read:

1812.304. (a) If the purchaser has not inspected at least one of the membership camping operator's campgrounds prior to purchase of a membership camping contract, the notice shall contain the following additional language:

"If you sign this contract without having first inspected one of the membership camping operator's campgrounds, you may also cancel this contract at any time prior to midnight of the 10th business day after date of purchase by mailing or delivering the signed and dated attached written notice of cancellation or a copy of the contract when that contains the cancellation instructions together with the original camping club contract, membership card and any other evidence of membership."

(b) The seller shall return any payment made by the purchaser under the contract or offer to purchase, and any negotiable instrument executed by the purchaser, within 10 days of the return of evidence of membership and cancellation of the contract by the purchaser. If the purchaser does not promptly return the evidence of membership, the 10-day period shall be extended until the evidence of membership is returned.

SEC. 9. Section 1812.307 of the Civil Code is amended and renumbered to read:

1812.314. (a) All money received from the owner of a membership camping contract or the prospective purchaser thereof, by a membership camping contract broker in advance of the completion of any membership camping contract resale, including, but not limited to, listing fees, and fees for services, shall be deposited into an escrow account. The money shall not be disbursed until the transaction is complete, or until the escrow agent has received written instructions to disburse the funds signed by the owner of the membership camping contract or the prospective purchaser and the broker. For purposes of this section, a transaction is complete when ownership of the membership camping contract has been transferred from the prior purchaser to the new purchaser in the manner required by the terms of the membership camping contract, all documents necessary to complete the transfer have been fully executed, and the new purchaser has not exercised the right to cancel provided in paragraph (2) of subdivision (c).

(b) The broker shall inform the new purchaser in writing of the

following:

(1) The risks of purchasing a membership camping contract without visiting at least one of the membership camping operator's campgrounds.

(2) That the membership camping operator may have a valid reason for not transferring the contract to the new purchaser such as a default in payment on contract or annual dues, or that the new purchaser does not meet the same credit standards applied to other new purchasers.

(3) That there may have been changes in the rules or regulations concerning the rights and obligations of the membership camping operator or its members including changes with respect to annual dues, fees, assessments, use restrictions or that some campgrounds may have been withdrawn.

(4) Any material changes or risks to the purchaser known to the broker.

(c) (1) Every broker shall provide in writing the following notice of cancellation to the new purchaser:

"You may cancel your contract of purchase, without any penalty or obligation, within 10 business days from the above date of purchase by mailing notice of cancellation together with the membership camping contract, if any, any contract for transfer, membership card or other evidence of membership to

_____,

(Name and address of broker)

the membership camping operator

_____

(Name and address of membership camping operator)

and the escrow company

_____,

(Name and address of escrow company)

if any, not later than midnight of _____.

(Date)

I hereby cancel this transaction _____

(Purchaser's signature)

_____.

(Date)

Notice by ordinary mail is adequate but certified mail return receipt requested is recommended."

(2) Any escrow company which receives a notice of cancellation from a purchaser shall, within 72 hours of receipt of the notice, notify the membership camping operator of the cancellation and shall refund any sums paid by the purchaser of the contract within 10 days of receipt of the notice of the cancellation and other documents. The escrow company shall incur no liability to the seller, purchaser, or broker as a result of its compliance with this section.

SEC. 10. Section 1812.307 is added to the Civil Code, to read:

1812.307. No membership camping operator shall withdraw from the use by purchasers of membership camping contracts any campground unless one of the following conditions is satisfied:

(a) Adequate provision is made to provide within a reasonable time, a substitute campground in the same general area that is as desirable for the purpose of camping and outdoor recreation.

(b) The campground is withdrawn from use because, despite good faith efforts by the membership camping operator, a person not affiliated with the membership camping operator has exercised a superior right to possession (such as the right of a lessor to take possession following expiration of a lease of the property) and the terms and date of the withdrawal were disclosed in writing to all purchasers at or prior to the time of any sale of a membership camping contract after the membership camping operator represented to purchasers that the campground would be available for camping or recreation purposes.

(c) The rights of all purchasers of membership camping contracts who are entitled to use the campground have expired or have been lawfully terminated.

SEC. 11. Section 1812.308 of the Civil Code is amended and renumbered to read:

1812.315. If any provision of this title or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

SEC. 12. Section 1812.308 is added to the Civil Code, to read:

1812.308. (a) Except in the case of a membership camping operator substituting a campground in accordance with Section 1812.307, no membership camping operator or owner of the underlying fee shall sell, lease, assign, or otherwise transfer his or her interest in a campground except by an instrument evidencing the transfer recorded in the office of the county recorder for the county in which the campground is located. The instrument shall be in recordable form and be executed by both the transferor and transferee and shall state each of the following:

(1) That the instrument is intended to protect the rights of all purchasers of membership camping contracts.

(2) That its terms may be enforced by any prior or subsequent purchaser so long as that purchaser is not in default on his or her obligations under the membership camping contract.

(3) That the transferee shall fully honor the rights of the purchasers to occupy and use the campground as provided in the purchaser's original membership camping contracts.

(4) That the transferee shall fully honor all rights of purchasers to cancel their contracts and receive appropriate refunds.

(5) That the obligations of the transferee under the instrument will continue to exist despite any cancellation or rejection of the

contracts between the membership camping operator and purchaser arising out of bankruptcy proceedings.

(b) If any transfer of the interest of the membership camping operator or owner of the underlying fee occurs in a manner which is not in compliance with this section, the terms set forth in this section shall be presumed to be a part of the transfer and shall be deemed to be included in the instrument of transfer. Notice of the transfer shall be mailed to each purchaser within 30 days of the transfer. Persons who hold blanket encumbrances on a campground shall not be considered transferees for the purposes of this section.

SEC. 13. Section 1812.309 is added to the Civil Code, to read:

1812.309. (a) Campgrounds subject to this section include any campground which is offered or made available by an operator for the first time after January 1, 1991, or any campground which becomes subject to a new or refinanced blanket encumbrance after January 1, 1991. A membership camping operator shall not offer or represent that any campground subject to this section is available for use by the purchasers of its camping contracts unless one of the following conditions has been satisfied:

(1) The membership camping operator obtains and records a nondisturbance agreement from each holder of a blanket encumbrance. The nondisturbance agreement is executed by the membership camping operator and each holder of the blanket encumbrance and includes the provisions set forth in subdivision (j) of Section 1812.300 and each of the following:

(A) The instrument may be enforced by purchasers of membership camping contracts. If the membership camping operator is not in default under its obligations to the holder of the blanket encumbrance, the agreement may be enforced by both the membership camping operator and the purchasers.

(B) The nondisturbance agreement is effective as between each purchaser and the holder of the blanket encumbrance despite any rejection or cancellation of the purchaser's contract during any bankruptcy proceedings of the membership camping operator.

(C) The agreement is binding upon the successors in the interest of both the membership camping operator and the holder of the blanket encumbrance.

(D) A holder of the blanket encumbrance who obtains title or possession, or who causes a change in title or possession in a campground by foreclosure or otherwise, and who does not continue to operate the campground upon conditions no less favorable to members than existed prior to the change of title or possession shall either:

(i) Offer the title or possession of the campground to an association of members to operate the campground.

(ii) Obtain a commitment from another entity which obtains title or possession to undertake the responsibility of operating the campground.

(2) The membership camping operator posts a surety bond or

irrevocable letter of credit with a trustee in favor of purchasers and which guarantees that the payments on the blanket encumbrance are made as they become due. A trustee shall be either a corporate trustee or an attorney licensed to practice law in this state.

(3) The membership camping operator delivers to a trustee an encumbrance trust agreement which contains each of the following provisions:

(A) The membership camping operator shall collaterally assign to the trustee all of its membership camping contracts receivable or other receivables of the membership camping operator in an amount calculated in accordance with subparagraph (B). The membership camping operator shall provide the trustee with a security interest in the receivables and all proceeds therefrom. For purposes of this section, the membership camping operator shall be credited with 100 percent of the outstanding principal balance of each receivable assigned to the trustee. All proceeds of the receivables shall be held in a trust account by the trustee subject to this section for the use and benefit of the purchasers to make the payments of principal and interest due under the blanket encumbrance. However, if the proceeds of the receivables during any calendar year exceed the amount due under the blanket encumbrance in the following calendar quarter, these excess funds shall be returned by the trustee to the membership camping operator.

(B) The amount of membership camping contracts receivable or other receivables to be collaterally assigned as described in subparagraph (A) shall be calculated based upon the maximum number of contracts per camping site to be offered on or after January 1, 1991, in connection with the campground in question, which number of contracts per camping site shall not exceed 15 multiplied by the total number of camping sites available at the campground thereby yielding the anticipated total number of contracts to be sold in connection with the campground. The outstanding balance due under the blanket encumbrance shall then be divided by the anticipated total number of contracts to arrive at the amount per contract sold to be paid over to the trustee in the form of collaterally assigned receivables as described in subparagraph (A). The membership camping operator shall make the required collateral assignments to the trustee on a quarterly basis based upon the actual sales of contracts at the campground in question during the previous calendar quarter. However, the membership camping operator's obligation to collaterally assign receivables to the trustee shall cease when the membership camping operator has collaterally assigned to the trustee an aggregate principal amount of receivables equal to 100 percent of the aggregate principal indebtedness remaining due under the blanket encumbrance.

(C) If the outstanding balance due under the blanket encumbrance at the time of execution of the encumbrance trust agreement exceeds the anticipated gross revenue based upon the

membership camping operator's price list to be generated by the sale of the anticipated total number of contracts as calculated in subparagraph (B), the membership camping operator shall meet the conditions specified in paragraph (1), (2), or (4) of this subdivision as to the full amount of the excess.

(D) It may be terminated by the membership camping operator if the membership camping operator has satisfied the obligation secured by the blanket encumbrance in full or has complied with paragraph (1), (2), or (4) of this subdivision. Upon termination of the agreement, all receivables and proceeds thereof held by the trustee shall be immediately assigned and delivered to the membership camping operator. All costs of administering this trust, filing, and perfecting the security interest, and foreclosing the lien shall be borne by the membership camping operator.

(4) Any financial institution which has made a hypothecation loan to the membership camping operator (a "hypothecation lender") shall have a lien on, or security interest in, the membership camping operator's interest in the campground, and the hypothecation lender shall have executed and recorded a nondisturbance agreement at the county recorder's office for the county in which the campground is located. Each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender shall execute and record at the county recorder's office, an instrument stating that the person shall give the hypothecation lender notice of, and at least 30 days to cure, any default under the blanket encumbrance before the person commences any foreclosure action affecting the campground. For the purposes of this paragraph, a "hypothecation loan to a membership camping operator" means a loan or line of credit secured by membership camping contracts receivable arising from the sale of membership camping contracts by the membership camping operator, which exceeds in the aggregate all outstanding indebtedness secured by blanket encumbrances superior to the interest held by the hypothecation lender.

A hypothecation lender who obtains title or possession, or who causes a change in title or possession, in a campground, by foreclosure or otherwise, and who does not continue to operate the campground upon conditions no less favorable to purchasers than existed prior to the change of title or possession shall either:

(A) Offer the title or possession to an association of members to operate the campground.

(B) Obtain a commitment from another entity which obtains title to, or possession of, the campground to undertake the responsibility of operating the campground.

(b) Any membership camping operator which does not comply at all times with subdivision (a) with regard to any blanket encumbrance in connection with any campground subject to that subdivision is prohibited from offering any membership camping contracts for sale during the period of noncompliance.

SEC. 14. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as other costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1530

An act to add Section 1517 to the Probate Code, and to amend Sections 272, 319, 332, 361.5, 366.26, 366.3, and 656 of, and to add Sections 248.5 and 366.4 to, the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

NOTE: See Stats. 1990, Ch. 79 for SECTION 1.

SEC. 2. Section 248.5 is added to the Welfare and Institutions Code, to read:

248.5. All written findings and orders of the court shall be served by the clerk of the court personally or by first-class mail within three judicial days of their issuance on the petitioner, the minor or the minor's counsel, the parent or the parent's counsel, and the guardian or the guardian's counsel.

SEC. 3. Section 272 of the Welfare and Institutions Code is amended to read:

272. (a) The board of supervisors may delegate to the county

welfare department all or part of the duties of the probation officer concerning dependent children described in Section 300.

(b) The board of supervisors may also delegate to those persons within the county welfare department performing child welfare services the probation officer's right of access to state summary criminal history information pursuant to Section 11105 of the Penal Code as is necessary to carry out its duties concerning children reasonably believed to be described by Section 300. The information shall include any current incarceration, the location of any current probation or parole, any current requirement that the individual register pursuant to Section 290 or 457.1 of the Penal Code, or pursuant to Section 11140 or 11590 of the Health and Safety Code, and any history of offenses involving abuse or neglect of, or violence against, a child, or convictions of any offenses involving violence, sexual offenses, the abuse or illegal possession, manufacture, or sale of alcohol or controlled substances, and any arrest for which the person is released on bail or on his or her own recognizance.

(c) Notwithstanding subdivision (a), a social worker in a county welfare department may perform the duties specified by Section 306.

SEC. 4. Section 319 of the Welfare and Institutions Code is amended to read:

319. At the initial petition hearing the court shall examine the minor's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the minor, the minor's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the minor, as provided in Section 350.

The probation officer shall report to the court on the reasons why the minor has been removed from the parent's custody; the need, if any, for continued detention; on the available services and the referral methods to those services which could facilitate the return of the minor to the custody of the minor's parents or guardians; and whether there are any relatives who are able and willing to take temporary custody of the minor. The court shall order the release of the minor from custody unless a prima facie showing has been made that the minor comes within Section 300 and any of the following circumstances exist:

(a) There is a substantial danger to the physical health of the minor or the minor is suffering severe emotional damage, and there are no reasonable means by which the minor's physical or emotional health may be protected without removing the minor from the parents' or guardians' physical custody.

(b) There is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee the jurisdiction of the court.

(c) The minor has left a placement in which he or she was placed by the juvenile court.

(d) The minor indicates an unwillingness to return home, if the minor has been physically or sexually abused by a person residing in the home.

The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his or her home and whether there are available services which would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would have eliminated the need to take temporary custody of the minor or would prevent the need for further detention. If the minor can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the minor with his or her parent or guardian and order that the services shall be provided. If the minor cannot be returned to the custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child. Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that the lack of preplacement preventive efforts were reasonable. Whenever a court orders a minor detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary, and shall order services to be provided as soon as possible to reunify the minor and his or her family if appropriate.

When the minor is not released from custody the court may order that the minor shall be placed in the suitable home of a relative or in an emergency shelter or other suitable licensed place or a place exempt from licensure designated by the juvenile court or in an appropriate certified family home whose license is pending and all the prelicense requirements for such a placement have been met as set forth in subdivision (e) of Section 361.2 for a period not to exceed 15 judicial days.

As used in this section, "relative" means an adult who is related to the minor by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand." However, only the following relatives shall be given preferential treatment for placement of the minor: an adult who is a grandparent, aunt, uncle, or a sibling of the minor.

SEC. 5. Section 332 of the Welfare and Institutions Code is amended to read:

332. A petition to commence proceedings in the juvenile court to declare a minor a ward or a dependent child of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and the subdivision under which the proceedings are instituted. If it is alleged that the minor is a person described by subdivision (e) of Section 300, the petition shall include an allegation pursuant to that section.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to the petitioner, of both parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to the petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there is none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, of all of the following: (1) Section 903 makes that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor or the parent by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

SEC. 6. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b), whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family within a maximum

time period not to exceed 12 months. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent shall be ordered to participate in those services, unless the parent's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended time period. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parents is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent. The posting or publication of notices is not required in such a search.

(2) That the parent is suffering from a mental disability that is described in Section 232 of the Civil Code and that renders him or her incapable of utilizing those services.

(3) That the minor had been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the parent or parents or guardian or guardians from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse. However, this section is not applicable if the jurisdiction of the juvenile court has been dismissed prior to the additional abuse.

(4) That the parent of the minor has been convicted of causing the death of another child through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

When paragraph (3), (4), or (5), inclusive, of subdivision (b) is applicable, the court shall not order reunification unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and postively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Services may include, but shall not be limited to, all of the following:

(1) Maintaining contact between parent and child through collect phone calls.

(2) Transportation services, where appropriate.

(3) Visitation services, where appropriate.

(4) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(f) If a court, pursuant to paragraph (2), (3), (4), or (5) of subdivision (b), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26 it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

SEC. 7. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Section 4600 of the Civil Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 224, 224m, and 7017 of the Civil Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review

the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently sever the parent or parents' rights and order that the child be placed for adoption.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) It shall terminate parental rights only if it first determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or Section 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 10 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional

well-being of the minor.

(2) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days. During this 60-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(3) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(4) If the court finds that the child should not be placed for adoption that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a

suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require such protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in such proportions as the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(f) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(g) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(h) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(i) If the court, by order or judgment declared the minor free from the custody and control of both parents, or one parent if the other no longer has custody and control, the court shall at the same time order the minor referred to a licensed county adoption agency for adoptive placement by the agency. However, no petition for adoption may be heard until the appellate rights of the natural parents have been exhausted. The licensed county adoption agency shall be responsible for the care and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted.

(j) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(k) An order by the court directing that a hearing pursuant to this

section be held is not an appealable order, but may be the subject of review by extraordinary writ.

SEC. 7.5. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989. The procedures specified herein are the exclusive procedures for conducting these hearings; Section 4600 of the Civil Code is not applicable to these proceedings. For minors who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360 on or after January 1, 1989, this section and Sections 221.20, 222.10, and 7017 of the Civil Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all minors who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently sever the parent or parents' rights and order that the child be placed for adoption.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) It shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted. If the court so determines, the findings pursuant to subdivision (b) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or pursuant to Section 366.21 or Section 366.22 that a minor cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the minor due to one of the following

circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) A minor 10 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances, which do not include an unwillingness to accept legal responsibility for the minor, but who is willing and capable of providing the minor with a stable and permanent environment and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the minor.

(2) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to paragraph (1) and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days. During this 60-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

(3) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor

shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

(4) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) At the beginning of any proceeding pursuant to this section, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require such protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel.

The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in such proportions as the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(f) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(g) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this subdivision.

(h) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(i) If the court, by order or judgment declared the minor free from the custody and control of both parents, or one parent if the other no longer has custody and control, the court shall at the same time order the minor referred to a licensed county adoption agency for adoptive placement by the agency. However, no petition for adoption may be heard until the appellate rights of the natural

parents have been exhausted. The licensed county adoption agency shall be responsible for the care and supervision of the minor and shall be entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted.

(j) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(k) An order by the court directing that a hearing pursuant to this section be held is not an appealable order, but may be the subject of review by extraordinary writ.

SEC. 8. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 366.25 or 366.26, the court shall retain jurisdiction over the minor until the minor is adopted or the legal guardianship is established. The status of the minor shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the minor has been granted, the court shall terminate its jurisdiction over the minor. The court may continue jurisdiction over the minor as a dependent minor of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the minor as a ward of the guardianship established pursuant to Section 366.25 or 366.26 and as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the minor.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the minor.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 366.25 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the minor. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the minor,

and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the minor in another permanent placement. At the hearing, the parents may be considered as custodians but the minor shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the minor. The court may, if it is in the interests of the minor, order that reunification services again be provided to the parent or parents.

(c) If the minor is in a placement other than a preadoptive home or the home of a legal guardian and jurisdiction has not been dismissed, the status of the minor shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency; the court shall conduct the review upon the request of the minor's parents or guardian or of the minor and shall conduct the review 18 months after the hearing held pursuant to Section 366.26 and every 18 months thereafter. The reviewing body shall inquire about the progress being made to provide a permanent home for the minor and shall determine the appropriateness of the placement, the continuing appropriateness and extent of compliance with the permanent plan for the child, the extent of compliance with the case plan, and the adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

Unless their parental rights have been permanently terminated, the parent or parents of the minor are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the minor, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the minor. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

SEC. 9. Section 366.4 is added to the Welfare and Institutions Code, to read:

366.4. Any minor for whom a guardianship has been established resulting from the selection or implementation of a permanent plan pursuant to Section 366.25 or 366.26 is within the jurisdiction of the

juvenile court. For those minors, Part 2 (commencing with Section 1500) of Division 4 of the Probate Code, relating to guardianship, shall not apply. If no specific provision of this code or the California Rules of Court is applicable, the provisions applicable to the administration of estates under Part 4 (commencing with Section 2100) of Division 4 of the Probate Code govern so far as they are applicable to like situations.

SEC. 10. Section 656 of the Welfare and Institutions Code is amended to read:

656. A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and subdivision under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to petitioner, of both of the parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there are none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, that: (1) Section 903 makes that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

(i) In a proceeding alleging that the minor comes within Section

601, notice to the parent, guardian, or other person having control or charge of the minor that failure to comply with the compulsory school attendance laws is an infraction, which may be charged and prosecuted before the juvenile court judge sitting as a municipal court judge. In those cases, the petition shall also include notice that the parent, guardian, or other person having control or charge of the minor has the right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure.

(j) If a proceeding is pending against a minor child for a violation of paragraph (7) of subdivision (a) of Section 640 of the Penal Code, a notice to the parent or legal guardian of the minor that if the minor is found to have violated that provision that (1) any community service which may be required of the minor may be performed in the presence, and under the direct supervision, of the parent or legal guardian pursuant to subdivision (b) of Section 640 of the Penal Code; and (2) if the minor is personally unable to pay any fine levied for the violation of paragraph (7) of subdivision (a) of Section 640 of the Penal Code, that the parent or legal guardian of the minor shall be liable for payment of the fine pursuant to that paragraph.

SEC. 11. Section 7.5 of this bill incorporates amendments to Section 366.26 of the Welfare and Institution Code proposed by both this bill and AB 3532. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, but this bill becomes operative first, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 3532, in which case Section 366.26 of the Welfare and Institutions Code, as amended by Section 7 of this bill, shall remain operative only until the operative date of AB 3532, at which time Section 7.5 of this bill shall become operative.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1531

An act to add Section 1708.5 to the Civil Code, relating to torts.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1708.5 is added to the Civil Code, to read:

1708.5. (a) A person commits a sexual battery who does any of the following:

(1) Acts with the intent to cause a harmful or offensive contact with an intimate part of another, and a sexually offensive contact with that person directly or indirectly results.

(2) Acts with the intent to cause a harmful or offensive contact with another by use of his or her intimate part, and a sexually offensive contact with that person directly or indirectly results.

(3) Acts to cause an imminent apprehension of the conduct described in paragraph (1) or (2), and a sexually offensive contact with that person directly or indirectly results.

(b) A person who commits a sexual battery upon another is liable to that person for damages, including, but not limited to, general damages, special damages, and punitive damages.

(c) The court in an action pursuant to this section may award equitable relief, including, but not limited to, an injunction, costs, and any other relief the court deems proper.

(d) For the purposes of this section "intimate part" means the sexual organ, anus, groin, or buttocks of any person, or the breast of a female.

(e) The rights and remedies provided in this section are in addition to any other rights and remedies provided by law.

(f) For purposes of this section "offensive contact" means contact that offends a reasonable sense of personal dignity.

CHAPTER 1532

An act to amend Section 650 of the Business and Professions Code, relating to health professionals.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 650 of the Business and Professions Code is amended to read:

650. Except as provided in Chapter 2.3 (commencing with

Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or coownership in or with any person to whom these patients, clients or customers are referred is unlawful.

The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payor.

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility; provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

"Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Health Services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1533

An act to add Section 6405 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 6405 is added to the Revenue and Taxation Code, to read:

6405. Notwithstanding Section 6246, the storage, use, or other consumption in this state of the first four hundred dollars ($400) of tangible personal property purchased in a foreign country by an individual from a retailer and personally hand carried into this state from the foreign country within any 30-day period is exempt from the use tax. This section shall not apply to property sent or shipped to this state.

SEC. 2. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1534

An act to amend Sections 10232 and 10232.4 of the Business and Professions Code, relating to real estate licensees.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 10232 of the Business and Professions Code is amended to read:

10232. (a) Except as otherwise expressly provided, the provisions of Sections 10232.1, 10232.2, 10232.25, 10232.4, and 10232.5 are applicable to every real estate broker who intends or reasonably expects in any successive 12 months to do either of the following:

(1) Negotiate any combination of 20 or more of the following transactions pursuant to subdivision (d) or (e) of Section 10131 or

Section 10131.1 in an aggregate amount of more than two million dollars ($2,000,000):

(A) Loans secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(B) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(C) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property as the owner of such notes or contracts.

(2) Make collections of payments in an aggregate amount of five hundred thousand dollars ($500,000) or more on behalf of owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.

Persons under common management, direction or control in conducting the activities enumerated above shall be considered as one person for the purpose of applying the above criteria.

(b) The negotiation of any combination of five or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than five hundred thousand dollars ($500,000) in any three successive months or any combination of 10 or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than one million dollars ($1,000,000) in any successive six months shall create a rebuttable presumption that the broker intends to negotiate new loans and sales and exchanges of an aggregate amount that will meet the criteria of subdivision (a).

(c) In determining the applicability of Section 10232.1, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, a bank, a bank holding company, a wholly owned subsidiary of a bank holding company, a savings and loan association, a savings and loan association holding company, an industrial loan company, a credit union, an insurance company, or a pension trust.

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to Article 6 (commencing with Section 10237) or applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

(d) In determining the applicability of Sections 10232.2, 10232.25, 10232.4, and 10232.5, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining

whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is any of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veteran's Administration.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, commercial finance lender, personal property broker, consumer finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit sharing, or welfare fund, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) which is organized to purchase the promissory note.

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to the provisions of Article 6 (commencing with Section 10237) or applicable provisions of the Corporate Securities Law of 1968 (Section 25000 and following of the Corporations Code).

(e) If two or more real estate brokers who are not under common management, direction, or control, cooperate in the negotiation of a loan or the sale or exchange of a promissory note or real property sales contract and share in the compensation for their services, the dollar amount of the transaction shall be allocated according to the ratio that the compensation received by each broker bears to the total compensation received by all brokers for their services in negotiating the loan or sale or exchange.

(f) A real estate broker who on the effective date of this section satisfies the criteria of subdivision (a) or (b) shall, within 30 days thereafter, notify the Department of Real Estate in writing of that fact. A broker who first meets any of the criteria of subdivision (a) or (b) after January 1, 1982, shall notify the department in writing within 30 days after such a determination is made.

SEC. 2. Section 10232.4 of the Business and Professions Code is

amended to read:

10232.4. (a) In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property or to purchase a real property sales contract or a note secured by a deed of trust, a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before he or she becomes obligated to make the loan or purchase and, except as provided in subdivision (c), before the receipt by or on behalf of the broker of any funds from that person. The statement shall be signed by the prospective lender or purchaser and by the real estate broker, or by a real estate salesperson licensed to the broker, on the broker's behalf. When so executed, an exact copy shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of four years.

(b) The requirement of delivery of a disclosure statement pursuant to subdivision (a) shall not apply with respect to the following persons:

(1) The prospective purchaser of a security offered under authority of a permit issued pursuant to Article 6 (commencing with Section 10237) of this chapter or applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) which requires that each prospective purchaser of a security be given a prospectus or other form of disclosure statement approved by the department issuing the permit.

(2) The seller of real property who agrees to take back a promissory note of the purchaser as a method of financing all or a part of the purchase of the property.

(3) The prospective purchaser of a security offered pursuant to and in accordance with a regulation duly adopted by the Commissioner of Corporations granting an exemption from qualification under the Corporate Securities Law of 1968 for the offering if one of the conditions of the exemption is that each prospective purchaser of the security be given a disclosure statement prescribed by the regulation before the prospective purchaser becomes obligated to purchase the security.

(4) A prospective lender or purchaser, if that lender or purchaser is any of the following:

(A) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or corporate or other instrumentality of any one or more of the foregoing, including the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veteran's Administration.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, personal property broker, commercial finance lender, consumer finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of pension, profit sharing, or welfare fund, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) which is organized to purchase the promissory note.

(F) A licensed real estate broker engaging in the business of selling all or part of the loan, note, or contract to a lender or purchaser to whom no disclosure is required pursuant to this subdivision.

(c) When the broker has custody of funds of a prospective lender or purchaser which were received and are being maintained with the express permission of the owner and in accordance with law, and the broker retains the funds in an escrow depository or a trust fund account pending receipt of the owner's express written instructions to disburse the funds for a loan or purchase, the broker shall cause the disclosure statement to be delivered to the owner and shall obtain the owner's written consent to the proposed disbursement before making the disbursement. Unless the broker has a written agreement with the owner as provided in Section 10231.1, the broker shall transmit to the owner not later than 60 days after receipt, all funds then in the broker's custody for which the owner has not given written instructions authorizing disbursement.

CHAPTER 1535

An act to amend Sections 715.010, 1166a, 1169, and 1174.3 of, and to add Sections 415.46 and 1174.25 to, the Code of Civil Procedure, and to add Section 26721.1 to the Government Code, relating to unlawful detainer.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 415.46 is added to the Code of Civil Procedure, to read:

415.46. (a) In addition to the service of a summons and complaint in an action for unlawful detainer upon a tenant and subtenant, if any, as prescribed by this article, a prejudgment claim of right to possession may also be served on any person who appears to be or who may claim to have occupied the premises at the time of the filing of the action. Service upon occupants shall be made pursuant to subdivision (c) by serving a copy of a prejudgment claim of right to possession, as specified in subdivision (f), attached to a copy of the summons and complaint at the same time service is made upon the tenant and subtenant, if any.

(b) Service of the prejudgment claim of right to possession in this manner shall be effected by a marshal, sheriff, or registered process server.

(c) When serving the summons and complaint upon a tenant and subtenant, if any, the marshal, sheriff, or registered process server shall make a reasonably diligent effort to ascertain whether there are other adult occupants of the premises who are not named in the summons and complaint by inquiring of the person or persons who are being personally served, or any person of suitable age and discretion who appears to reside upon the premises, whether there are other occupants of the premises.

If the identity of such an occupant is disclosed to the officer or process server and the occupant is present at the premises, the officer or process server shall serve that occupant with a copy of the prejudgment claim of right to possession attached to a copy of the summons and complaint. If personal service cannot be made upon that occupant at that time, service may be effected by (1) leaving a copy of a prejudgment claim of right to possession attached to a copy of the summons and complaint addressed to that occupant with a person of suitable age and discretion at the premises, (2) affixing the same so that it is not readily removable in a conspicuous place on the premises in a manner most likely to give actual notice to that occupant, and (3) sending the same addressed to that occupant by registered mail.

In addition to the service on an identified occupant, or if no

occupant is disclosed to the officer or process server, or if substituted service in accordance with Section 415.45 is made upon the tenant and subtenant, if any, the officer or process server shall serve a prejudgment claim of right to possession for all other persons who may claim to occupy the premises at the time of the filing of the action by (1) leaving a copy of a prejudgment claim of right to possession attached to a copy of the summons and complaint at the premises at the same time service is made upon the tenant and subtenant, if any, (2) affixing the same so that it is not readily removable in a conspicuous place on the premises so that it is likely to give actual notice to an occupant, and (3) sending the same addressed to "all occupants in care of the named tenant" to the premises by registered mail.

(d) Proof of service under this section shall be filed with the court and shall include a statement that service was made pursuant to this section. Service on occupants in accordance with this section shall not alter or affect service upon the tenant or subtenant, if any.

(e) If an owner or his or her agent has directed and obtained service of a prejudgment claim of right to possession in accordance with this section, no occupant of the premises, whether or not such occupant is named in the judgment for possession, may object to the enforcement of that judgment as prescribed in Section 1174.3.

(f) The prejudgment claim of right to possession shall be made on the following form:

NOTICE

EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.

If you live here and you do not complete and submit this form within 10 days of the date of service shown on this form, you will be evicted without further hearing by the court along with the persons named in the summons and complaint.

If you file this form, your claim will be determined in the eviction action against the persons named in the complaint.

If you do not file this form, you will be evicted without further hearing.

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address): TELEPHONE NO.	FOR COURT USE ONLY
ATTORNEY FOR (Name):	
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
PREJUDGMENT CLAIM OF RIGHT TO POSSESSION	
	CASE NUMBER:

DATE OF SERVICE:
(Date that form is served or delivered, posted and mailed by the officer or process server)

Complete this form only if ALL of these statements are true:
1. You are NOT named in the accompanying Summons and Complaint.
2. You occupied the subject premises on or before the date the unlawful detainer (eviction) complaint was filed. (The date is in the accompanying Summons and Complaint.)
3. You still occupy the subject premises.

PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

202950

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit no., city and ZIP code):
3. The address of "the premises" subject to this claim is (address):
4. On (insert date): [_____] , the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is in the accompanying Summons and Complaint.)
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. (Filing fee) I understand that I must go to the court and pay a filing fee of $_____ or file with the court "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file the form for waiver of court fees within 10 days from the date of service on the form (excluding court holidays), I will not be entitled to make a claim of right to possession. I also understand that I will have 5 days (excluding court holidays) to file a response to the Summons and Complaint after I file this claim of possession.

NOTICE: If you fail to file this claim, you will be evicted without further hearing.

PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

11. Rental agreement. I have (check all that apply to you):
    a. ☐ an oral rental agreement with the landlord.
    b. ☐ a written rental agreement with the landlord.
    c. ☐ an oral rental agreement with a person other than the landlord.
    d. ☐ a written rental agreement with a person other than the landlord.
    e. ☐ other (explain):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

. . . . . ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF CLAIMANT)

NOTICE: If you file this claim to possession, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

NOTICE TO OCCUPANTS

YOU MUST ACT AT ONCE IF ALL THE FOLLOWING ARE TRUE:

(1) You are not named in the accompanying Summons and Complaint.

(2) You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed.

(3) You still occupy the premises.

You can complete and SUBMIT THIS CLAIM FORM within 10 days from the date of service (on the form) at the court where the unlawful detainer (eviction) complaint was filed.

If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED.

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. If you do not file this claim, you will be evicted without a hearing.

PREJUDGMENT CLAIM OF RIGHT TO POSSESSION

202950

SEC. 1.5. Section 715.010 of the Code of Civil Procedure is amended to read:

715.010. (a) A judgment for possession of real property may be enforced by a writ of possession of real property issued pursuant to Section 712.010. The application for the writ shall provide a place to indicate that the writ applies to all tenants, subtenants, if any, name claimants, if any, and any other occupants of the premises.

(b) In addition to the information required by Section 712.020, the writ of possession of real property shall contain the following:

(1) A description of the real property, possession of which is to be delivered to the judgment creditor in satisfaction of the judgment.

(2) A statement that if the real property is not vacated within five days from the date of service of a copy of the writ on the occupant or, if the copy of the writ is posted, within five days from the date a copy of the writ is served on the judgment debtor, the levying officer will remove the occupants from the real property and place the judgment creditor in possession.

(3) A statement that any personal property remaining on the real property after the judgment creditor has been placed in possession will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the judgment debtor or other owner pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the real property.

(4) The date the complaint was filed in the action which resulted in the judgment of possession.

(5) The date or dates on which the court will hear objections to enforcement of a judgment of possession that are filed pursuant to Section 1174.3.

(6) The daily rental value of the property as of the date the complaint for unlawful detainer was filed.

(c) At the time the writ of possession is served or posted, the levying officer shall also serve or post a copy of the form for a claim of right to possession.

SEC. 2. Section 1166a of the Code of Civil Procedure is amended to read:

1166a. (a) Upon filing the complaint, the plaintiff may, upon motion, have immediate possession of the premises by a writ of possession of a manufactured home, mobilehome, or real property issued by the court and directed to the sheriff of the county, or constable or marshal, for execution, where it appears to the satisfaction of the court, after a hearing on the motion, from the verified complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, that the defendant resides out of state, has departed from the state, cannot, after due diligence, be found within the state, or has concealed himself or herself to avoid the service of summons. The motion shall indicate that the writ applies to all tenants, subtenants, if any, named claimants, if any, and any other occupants of the premises.

(b) Written notice of the hearing on the motion shall be served on the defendant by the plaintiff in accordance with the provisions of Section 1011, and shall inform the defendant as follows: "You may file affidavits on your own behalf with the court and may appear and present testimony on your own behalf. However, if you fail to appear, the plaintiff will apply to the court for a writ of possession of a manufactured home, mobilehome, or real property."

(c) The plaintiff shall file an undertaking in such sum as shall be fixed and determined by the judge, to the effect that, if the plaintiff fails to recover judgment against the defendant for the possession of the premises or if the suit is dismissed, the plaintiff will pay to the defendant such damages, not to exceed the amount fixed in the undertaking, as may be sustained by the defendant by reason of such dispossession under the writ of possession of a manufactured home, mobilehome, or real property.

(d) If, at the hearing on the motion, the findings of the court are in favor of the plaintiff and against the defendant, an order shall be entered for the immediate possession of the premises.

(e) The order for the immediate possession of the premises may be enforced as provided in Division 3 (commencing with Section 712.010) of Title 9 of Part 2.

(f) For the purposes of this section, references in Division 3 (commencing with Section 712.010) of Title 9 of Part 2 and in subdivisions (e) to (m), inclusive, of Section 1174, to the "judgment debtor" shall be deemed references to the defendant, to the "judgment creditor" shall be deemed references to the plaintiff, and to the "judgment of possession or sale of property" shall be deemed references to an order for the immediate possession of the premises.

SEC. 2.6. Section 1169 of the Code of Civil Procedure is amended to read:

1169. If at the time appointed any defendant served with a summons does not appear and defend, the clerk, or the judge if there is no clerk, upon written application of the plaintiff and proof of the service of summons and complaint, shall enter the default of any defendant so served, and, if requested by the plaintiff, immediately shall enter judgment for restitution of the premises and shall issue a writ of execution thereon. The application for default judgment shall include a place to indicate that the judgment includes tenants, subtenants, if any, named claimants, if any, and any other occupants of the premises. Thereafter, the plaintiff may apply to the court for any other relief demanded in the complaint, including the costs, against the defendant, or defendants, or against one or more of the defendants.

SEC. 2.8. Section 1174.25 is added to the Code of Civil Procedure, to read:

1174.25. (a) Any occupant who is served with a prejudgment claim of right to possession in accordance with Section 415.46 may file a claim as prescribed in Section 415.46, with the court within 10 days of the date of service of the prejudgment claim to right of possession

as shown on the return of service, which period shall include Saturday and Sunday but excluding all other judicial holidays. If the last day for filing the claim falls on a Saturday or Sunday, the filing period shall be extended to and including the next court day. Filing the prejudgment claim of right to possession shall constitute a general appearance for which a fee shall be collected as provided in Section 72056 of the Government Code. Section 68511.3 of the Government Code applies to the prejudgment claim of right to possession.

(b) At the time of filing, the claimant shall be added as a defendant in the action for unlawful detainer and the clerk shall notify the plaintiff that the claimant has been added as a defendant in the action. The claimant shall answer or otherwise respond to the summons and complaint within five days, including Saturdays and Sundays but excluding all other judicial holidays, after filing the prejudgment claim of possession. Thereafter, the name of the claimant shall be added to any pleading, filing or form filed in the action for unlawful detainer.

SEC. 3. Section 1174.3 of the Code of Civil Procedure is amended to read:

1174.3. (a) Unless a prejudgment claim of right to possession has been served upon occupants in accordance with Section 415.46, any occupant not named in the judgment for possession who occupied the premises on the date of the filing of the action may object to enforcement of the judgment against that occupant by filing a claim of right to possession as prescribed in this section. A claim of right to possession may be filed at any time after service or posting of the writ of possession pursuant to subdivision (a) or (b) of Section 715.020, up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession. Filing the claim of right to possession shall constitute a general appearance for which a fee shall be collected as provided in Section 72056 of the Government Code. Section 68511.3 of the Government Code applies to the claim of right to possession.

(b) The court issuing the writ of possession of real property shall set a date or dates when the court will hold a hearing to determine the validity of objections to enforcement of the judgment specified in subdivision (a). An occupant of the real property for which the writ is issued may make an objection to eviction to the levying officer at the office of the levying officer or at the premises at the time of the eviction.

If a claim of right to possession is completed and presented to the sheriff, marshal, or other levying officer, the officer shall forthwith (1) stop the eviction of occupants at the premises, and (2) provide a receipt or copy of the completed claim of right of possession to the claimant indicating the date and time the completed form was received, and (3) deliver the original completed claim of right to possession to the court issuing the writ of possession of real property.

(c) A claim of right to possession is effected by any of the

following:

(1) Presenting a completed claim form in person with identification to the sheriff, marshal, or other levying officer as prescribed in this section, and delivering to the court within two court days after its presentation, an amount equal to 15 days' rent together with the appropriate fee or form for proceeding in forma pauperis. Upon receipt of a claim of right to possession, the sheriff, marshal, or other levying officer shall indicate thereon the date and time of its receipt and forthwith deliver the original to the issuing court and a receipt or copy of the claim to the claimant and notify the plaintiff of that fact. Immediately upon receipt of an amount equal to 15 days' rent and the appropriate fee or form for proceeding in forma pauperis, the court shall file the claim of right to possession and serve an endorsed copy with the notice of the hearing date on the plaintiff and the claimant by first-class mail. The court issuing the writ of possession shall set and hold a hearing on the claim not less than five nor more than 15 days after the claim is filed with the court.

(2) Presenting a completed claim form in person with identification to the sheriff, marshal, or other levying officer as prescribed in this section, and delivering to the court within two court days after its presentation, the appropriate fee or form for proceeding in forma pauperis without delivering the amount equivalent to 15 days' rent. In this case, the court shall immediately set a hearing on the claim to be held on the fifth day after the filing is completed. The court shall notify the claimant of the hearing date at the time the claimant completes the filing by delivering to the court the appropriate fee or form for proceeding in forma pauperis, and shall notify the plaintiff of the hearing date by first-class mail. Upon receipt of a claim of right to possession, the sheriff, marshal, or other levying officer shall indicate thereon the date and time of its receipt and forthwith deliver the original to the issuing court and a receipt or copy of the claim to the claimant and notify the plaintiff of that fact.

(d) At the hearing, the court shall determine whether there is a valid claim of possession by the claimant who filed the claim, and the court shall consider all evidence produced at the hearing, including, but not limited to, the information set forth in the claim. The court may determine the claim to be valid or invalid based upon the evidence presented at the hearing. The court shall determine the claim to be invalid if the court determines that the claimant is an invitee, licensee, guest, or trespasser. If the court determines the claim is invalid, the court shall order the return to the claimant of the amount of the 15 days' rent paid by the claimant, if that amount was paid pursuant to paragraphs (1) or (3) of subdivision (c), less a pro rata amount for each day that enforcement of the judgment was delayed by reason of making the claim of right to possession, which pro rata amount shall be paid to the landlord. If the court determines the claim is valid, the amount equal to 15 days' rent paid by the claimant shall be returned immediately to the claimant.

(e) If, upon hearing, the court determines that the claim is valid, then the court shall order further proceedings as follows:

(1) If the unlawful detainer is based upon a curable breach, and the claimant was not previously served with a proper notice, if any notice is required, then the required notice may at the plaintiff's discretion be served on the claimant at the hearing or thereafter. If the claimant does not cure the breach within the required time, then a supplemental complaint may be filed and served on the claimant as defendant if the plaintiff proceeds against the claimant in the same action. For the purposes of this section only, service of the required notice, if any notice is required, and of the supplemental complaint may be made by first-class mail addressed to the claimant at the subject premises or upon his or her attorney of record and, in either case, Section 1013 shall otherwise apply. Further proceedings on the merits of the claimant's continued right to possession after service of the Summons and Supplemental Complaint as prescribed by this subdivision shall be conducted pursuant to this chapter.

(2) In all other cases, the court shall deem the unlawful detainer Summons and Complaint to be amended on their faces to include the claimant as defendant, service of the Summons and Complaint, as thus amended, may at the plaintiff's discretion be made at the hearing or thereafter, and the claimant thus named and served as a defendant in the action shall answer or otherwise respond within five days thereafter.

(f) If a claim is made without delivery to the court of the appropriate filing fee or a form for proceeding in forma pauperis, as prescribed in this section, the claim shall be immediately deemed denied and the court shall so order. Upon the denial of the claim, the court shall immediately deliver an endorsed copy of the order to the levying officer and shall serve an endorsed copy of the order on the plaintiff and claimant by first-class mail.

(g) If the claim of right to possession is denied pursuant to subdivision (f), or if the claimant fails to appear at the hearing or, upon hearing, if the court determines that there are no valid claims, or if the claimant does not prevail at a trial on the merits of the unlawful detainer action, the court shall order the levying officer to proceed with enforcement of the original writ of possession of real property as deemed amended to include the claimant, which shall be effected within a reasonable time not to exceed five days. Upon receipt of the court's order, the levying officer shall enforce the writ of possession of real property against any occupant or occupants.

(h) The claim of right to possession shall be made on the following form:

CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address):	TELEPHONE NO:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF: DEFENDANT:		
CLAIM OF RIGHT TO POSSESSION AND NOTICE OF HEARING		

CASE NUMBER.

(For levying officer use only)
Completed form was received on
Date: _____ Time: _____
By: _____

Complete this form only if ALL of these statements are true:
1. You are NOT named in the accompanying form called Writ of Possession.
2. You occupied the premises on or before the date the unlawful detainer (eviction) action was filed. (The date is in the accompanying Writ of Possession.)
3. You still occupy the premises.

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit no., city and ZIP code):
3. The address of "the premises" subject to this claim is (address):
4. On (insert date): ☐ , the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is in the accompanying Writ of Possession.)
5. I occupied the premises on the date the complaint was filed (the date in item 4). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (the date in item 4).

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8. I was not named in the Writ of Possession.

9. I understand that if I make this claim of possession, a court hearing will be held to decide whether my claim will be granted.

10. (Filing fee) To obtain a court hearing on my claim, I understand that after I present this form to the levying officer I must go to the court and pay a filing fee of $ or file with the court "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file the form for waiver of court fees within 2 court days, the court will immediately deny my claim.

11. (Immediate court hearing unless you deposit 15 days' rent) To obtain a court hearing on my claim, I understand I must also present a copy of this completed complaint form or a receipt from the levying officer. I also understand the date of my hearing will be set immediately if I do not deliver to the court an amount equal to 15 days' rent.

I am filing my claim in the following manner (check the box that shows how you are filing your claim. Note that you must deliver to the court a copy of the claim form or a levying officer's receipt):

a. ☐ I presented this claim form to the sheriff, marshal, or other levying officer, and within two court days I shall deliver to the court the following: (1) a copy of this completed claim form or a receipt, (2) the court filing fee or form for proceeding in forma pauperis, and (3) an amount equal to 15 days' rent; or

b. ☐ I presented this claim form to the sheriff, marshal, or other levying officer, and within two court days I shall deliver to the court (1) a copy of this completed claim form or a receipt, and (2) the court filing fee or form for proceeding in forma pauperis.

IMPORTANT: Do not take a copy of this claim form to the court unless you have first given the form to the sheriff, marshal, or other levying officer.

(To be completed by the court.)			
Date of Hearing:	Time:	Dept. or Div.:	Room:
Address of court:			

NOTICE: If you fail to appear at this hearing you will be evicted without further hearing.

CLAIM OF RIGHT TO POSSESSION
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12. Rental agreement. I have (check all that apply to you):
    a. ☐ an oral rental agreement with the landlord.
    b. ☐ a written rental agreement with the landlord.
    c. ☐ an oral rental agreement with a person other than the landlord.
    d. ☐ a written rental agreement with a person other than the landlord.
    e. ☐ other (explain):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

. . . . . ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF CLAIMANT)

NOTICE: If your claim to possession is found to be valid, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

NOTICE TO OCCUPANTS

YOU MUST ACT AT ONCE IF ALL THE FOLLOWING ARE TRUE:

(1) You are not named in the accompanying form called Writ of Possession;

(2) You occupied the premises on or before the date the unlawful detainer (eviction) action was filed; and

(3) You still occupy the premises.

You can complete and SUBMIT THIS CLAIM FORM

(1) before the date of eviction at the sheriff's or marshal's office located at: (address)

(2) OR at the premises at the time of the eviction. (Give this form to the officer who comes to evict you.)

If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), YOU WILL BE EVICTED along with the parties named in the writ.

After this form is properly filed, A HEARING WILL BE HELD to decide your claim. If you do not appear at the hearing, you will be evicted without a further hearing.

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SEC. 4. Section 26721.1 is added to the Government Code, to read:

26721.1. In an action for unlawful detainer, the fee for service of a summons, complaint, and prejudgment claim of right to possession pursuant to Section 415.46 of the Code of Civil Procedure is twenty-five dollars ($25) for all occupants not named in the summons. The fee is not refundable.

SEC. 5. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

CHAPTER 1536

An act to add and repeal Section 3260 of the Civil Code, relating to works of improvement.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 3260 is added to the Civil Code, to read:

3260. (a) This section is applicable with respect to all contracts entered into on or after July 1, 1991, relating to the construction of any private work of improvement.

(b) The retention proceeds withheld from any payment by the owner from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 45 days after the date on which a certificate of occupancy is issued for the work of improvement, the retention withheld by the owner shall be released. However, release of retentions withheld for any portion of the work of improvement which ultimately will become the property of a public agency, may be conditioned upon the acceptance of the work by the public agency. In the event of a dispute between the owner and the original contractor, the owner may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

(d) Subject to subdivision (e), within 10 days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) The original contractor may withhold from a subcontractor its portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) In the event that retention payments are not made within the time periods required by this section, the owner or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(g) It shall be against public policy for any party to require any other party to waive any provision of this section.

(h) This section shall not be construed to apply to retentions withheld by a lender in accordance with the construction loan agreement.

(i) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1996, deletes or extends that date. Notwithstanding its repeal, this section shall continue to apply to all contracts entered into on or after July 1, 1991, and before January 1, 1996.

CHAPTER 1537

An act to add Sections 1695.15, 1695.16, 1695.17, 2945.9, 2945.10, and 2945.11 to the Civil Code, relating to real property.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1695.15 is added to the Civil Code, to read:

1695.15. (a) An equity purchaser is liable for all damages resulting from any statement made or act committed by the equity purchaser's representative in any manner connected with the equity purchaser's acquisition of a residence in foreclosure, receipt of any consideration or property from or on behalf of the equity seller, or the performance of any act prohibited by this chapter.

(b) "Representative" for the purposes of this section means a person who in any manner solicits, induces, or causes any property owner to transfer title or solicits any member of the property owner's family or household to induce or cause any property owner to transfer title to the residence in foreclosure to the equity purchaser.

SEC. 2. Section 1695.16 is added to the Civil Code, to read:

1695.16. (a) Any provision of a contract which attempts or

purports to limit the liability of the equity purchaser under Section 1695.15 shall be void and shall at the option of the equity seller render the equity purchase contract void. The equity purchaser shall be liable to the equity seller for all damages proximately caused by that provision. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this chapter shall be void at the option of the equity seller only upon grounds as exist for the revocation of any contract.

(b) This section shall apply to any contract entered into on or after January 1, 1991.

SEC. 3. Section 1695.17 is added to the Civil Code, to read:

1695.17. (a) Any representative, as defined in subdivision (b) of Section 1695.15, deemed to be the agent or employee, or both the agent and the employee of the equity purchaser shall be required to provide both of the following:

(1) Written proof to the equity seller that the representative has a valid current California Real Estate Sales License and that the representative is bonded by an admitted surety insurer in an amount equal to twice the fair market value of the real property which is the subject of the contract.

(2) A statement in writing, under penalty of perjury, that the representative has a valid current California Real Estate Sales License, is bonded by an admitted surety insurer in an amount equal to at least twice the value of the real property which is the subject of the contract and has complied with paragraph (1). The written statement required by this paragraph shall be provided to all parties to the contract prior to the transfer of any interest in the real property which is the subject of the contract.

(b) The failure to comply with subdivision (a) shall at the option of the equity seller render the equity purchase contract void and the equity purchaser shall be liable to the equity seller for all damages proximately caused by the failure to comply.

SEC. 4. Section 2945.9 is added to the Civil Code, to read:

2945.9. A foreclosure consultant is liable for all damages resulting from any statement made or act committed by the foreclosure consultant's representative in any manner connected with the foreclosure consultant's (1) performance, offer to perform, or contract to perform any of the services described in subdivision (a) of Section 2945.1, (2) receipt of any consideration or property from or on behalf or an owner, or (3) performance of any act prohibited by this article.

(b) "Representative" for the purposes of this section means a person who in any manner solicits, induces, or causes (1) any owner to contract with a foreclosure consultant, (2) any owner to pay any consideration or transfer title to the residence in foreclosure to the foreclosure consultant, or (3) any member of the owner's family or household to induce or cause any owner to pay any consideration or transfer title to the residence in foreclosure to the foreclosure consultant.

SEC. 5. Section 2945.10 is added to the Civil Code, to read:

2945.10. (a) Any provision in a contract which attempts or purports to limit the liability of the foreclosure consultant under Section 2945.9 shall be void and shall at the option of the owner render the contract void. The foreclosure consultant shall be liable to the owner for all damages proximately caused by that provision. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under this chapter shall be void at the option of the owner only upon grounds as exist for the revocation of any contract.

(b) This section shall apply to any contract entered into on or after January 1, 1991.

SEC. 6. Section 2945.11 is added to the Civil Code, to read:

2945.11. (a) Any representative, as defined in subdivision (b) of Section 2945.09, deemed to be the agent or employee or both the agent and the employee of the foreclosure consultant shall be required to provide both of the following:

(1) Written proof to the owner that the representative has a valid current California Real Estate Sales License and that the representative is bonded by an admitted surety insurer in an amount equal to at least twice the fair market value of the real property which is the subject of the contract.

(2) A statement in writing, under penalty of perjury, that the representative has a valid current California Real Estate Sales License, that the representative is bonded by an admitted surety insurer in an amount equal to at least twice the value of the real property which is the subject of the contract and has complied with paragraph (1). The written statement required by this paragraph shall be provided to all parties to the contract prior to the transfer of any interest in the real property which is the subject of the contract.

(b) The failure to comply with subdivision (a) shall at the option of the owner render the contract void and the foreclosure consultant shall be liable to the owner for all damages proximately caused by the failure to comply.

CHAPTER 1538

An act to amend Section 29100 of the Government Code, relating to property taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 29100 of the Government Code is amended to read:

29100. On or before the first business day of September of each year, the board shall adopt by resolution the rates of taxes on the secured roll, not to exceed the 1-percent limitation specified in Article XIII A of the Constitution and Sections 93 and 100 of the Revenue and Taxation Code; for voter-approved indebtedness, the board shall adopt the rates on the secured roll by determining the percentage of full value of property on the secured roll legally subject to support the annual debt requirement. Each rate shall be such as will produce the amount determined as necessary to be raised by taxation on the secured roll after due allowance for delinquency, anticipated changes to the roll, disputed tax revenues anticipated to be impounded pursuant to Section 26906.1, amounts subject to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, and other available financing sources. The board may adopt a rate for voter-approved indebtedness as will produce an amount determined as appropriate for necessary reserves. For purposes of this section, "an amount appropriate for necessary reserves" shall be limited to an amount sufficient to accommodate the county's anticipated annual cash-flow needs for servicing the county's voter-approved debt. The reserve may service only the debt for which the extraordinary rate is levied. All interest earned on the amount deposited in the necessary reserve shall accrue to the necessary reserve.

The board may, by resolution, extend on a permanent basis or for a limited period the date specified by this section from the first business day of each September to each October 3.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow counties the authority to meet minimum annual debt requirements at the earliest possible time, it is necessary that this act go into effect immediately.

CHAPTER 1539

An act to add Sections 2191.2, 2914.1, and 4099.5 to the Business and Professions Code, relating to healing arts.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature declares and finds that the number of elderly in California represent 11 percent of the population and they consume over 33 percent of prescription drugs and 50 percent of over-the-counter medications. Older Americans account for 15 percent of hospital admissions each year due to adverse drug effects with hospital costs in California estimated at $289 million. Drug abuse among seniors is usually unintentional and results in over 33,000 deaths each year in the United States.

The Legislature also finds and declares that less than 2 percent of the students enrolled in medical schools study geriatrics and a significant number of physicians lack sufficient knowledge of prescribing drugs to the elderly. Also, that an elderly person's pharmacist plays an important role in monitoring and controlling medication misuse and a pharmacist consultation with an elderly patient can reduce medicine consumption, lower drug costs, and decrease adverse reactions.

It is the intent of the Legislature that the Medical Board of California and the State Board of Pharmacy identify, approve, and promote continuing education in geriatric pharmacology in accordance with this act.

SEC. 2. Section 2191.2 is added to the Business and Professions Code, to read:

2191.2. The division shall encourage every physician and surgeon to take a course in geriatric pharmacology as part of his or her continuing education, unless his or her patient rolls consist of less than 10 percent of elderly patients.

SEC. 3. Section 2914.1 is added to the Business and Professions Code, to read:

2914.1. The board shall encourage every licensed psychologist to take a continuing education course in geriatric pharmacology as a part of his or her continuing education.

SEC. 4. Section 4099.5 is added to the Business and Professions Code, to read:

4099.5. The board shall encourage every licensee to take a continuing education course in geriatric pharmacology as a part of his or her continuing education.

CHAPTER 1540

An act relating to education.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. For the purpose of Provision 23 of Item 6110-101-001 of the Budget Act of 1990, "enrollment" and "average daily attendance" are both defined as regular average daily attendance as reported for purposes of the second principal apportionment.

CHAPTER 1541

An act to amend Section 5474.29 of, and to repeal Section 5474.27 of, the Health and Safety Code, and to add Section 6712 to the Labor Code, relating to occupational safety and health.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 5474.27 of the Health and Safety Code is repealed.

SEC. 2. Section 5474.29 of the Health and Safety Code is amended to read:

5474.29. (a) Except as provided in Section 18930, the State Department of Health Services, after consultation with the State Departments of Food and Agriculture and Industrial Relations, may make and promulgate reasonable regulations in accordance with this chapter pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and may adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of this code. The regulations shall be at least as effective as those adopted pursuant to Section 6712 of the Labor Code.

(b) No part of this chapter shall be construed to abridge or limit in any manner the jurisdiction of the Division of Occupational Safety and Health pursuant to Division 5 (commencing with Section 6300) of the Labor Code.

SEC. 3. Section 6712 is added to the Labor Code, to read:

6712. (a) The standards board shall, no later than December 1, 1991, adopt an occupational safety and health standard for field sanitation. The standard shall comply with all of the following:

(1) The standard shall be at least as effective as the federal field

sanitation standard contained in 29 Code of Federal Regulations 1928.110.

(2) The standard shall be at least as effective as California field sanitation requirements in effect as of July 1, 1990, pursuant to Chapter 6.5 (commencing with Section 5474.20) of Part 3 of Division 5 of the Health and Safety Code, Chapter 1 (commencing with Section 3700) of Part 1 of Division 5 of the Health and Safety Code, and Section 2441 of the Labor Code.

(3) The standard shall apply to all agricultural places of employment.

(4) The standard shall require that toilets are serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance.

(b) Consistent with its mandatory investigation and reinspection duties under Sections 6309, 6313, and 6320, the division shall develop and implement a special emphasis program for enforcement of the standard for at least two years following its adoption. The division shall also develop a written plan to coordinate its enforcement program with other state and local agencies. The division shall be the lead enforcement agency. Other state and local agencies shall cooperate with the division in the development and implementation of the plan. The division shall report to the Legislature, not later than January 1, 1994, on its enforcement program.

(c) Past violations of field sanitation requirements established pursuant to Chapter 6.5 (commencing with Section 5474.20) of Part 3 of Division 5 of the Health and Safety Code, Chapter 1 (commencing with Section 3700) of Part 1 of Division 5 of the Health and Safety Code, and Section 2441 of the Labor Code occurring within the previous five years, shall constitute evidence of willfulness pursuant to Section 6429.

(d) (1) Notwithstanding Sections 6317 and 6434, any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty under the appropriate provisions of Sections 6427 to 6430, inclusive, except that in no case shall the penalty be less than seven hundred fifty dollars ($750) for each violation.

(2) Abatement periods fixed by the division pursuant to Section 6317 for violations shall be limited to one working day. However, the division may, pursuant to Section 6319.5, modify the period in cases where a good faith effort to comply with the abatement requirement is shown. The filing of an appeal with the appeals board pursuant to Sections 6319 and 6600 shall not stay the abatement period.

(3) An employer cited pursuant to paragraph (1) of this subdivision shall be required to annually complete a field sanitation compliance form which shall list the estimated peak number of employees, the toilets, washing, and drinking water facilities to be provided by the employer, any rental and maintenance agreements, and any other information considered relevant by the division for a period of five years following the citation. The employer shall be

required to annually submit the completed form, subscribed under penalty of perjury, to the division, or to an agency designated by the division.

(e) The division shall notify the State Department of Health Services and the appropriate local health officers whenever a violation of the standard adopted pursuant to this section may result in the adulteration of food with harmful bacteria or other deleterious substances within the meaning of Article 3 (commencing with Section 26520) of Chapter 5 of Division 21 of the Health and Safety Code.

(f) Pending final adoption and approval of the standard required by subdivision (a), the division may enforce the field sanitation standards prescribed by Section 1928.110 of Title 29 of the Code of Federal Regulations, except subdivision (a) of Section 1928.110, in the same manner as other standards contained in this division.

CHAPTER 1542

An act to amend Section 53201 of the Government Code, and to amend Sections 32121, 32126.5, and 32128 of the Health and Safety Code, relating to local hospital districts.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 53201 of the Government Code is amended to read:

53201. (a) The legislative body of a local agency, subject to such conditions as may be established by it, may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees, and retired members of the legislative body who elect to accept the benefits and who authorize the local agency to deduct the premiums, dues, or other charges from their compensation, to the extent that such charges are not covered by payments from funds under the jurisdiction of the local agency as permitted by Government Code Section 53205.

(b) The legislative body of a local agency may also provide for the continuation of any health and welfare benefits for the benefit of former elective members of the legislative body who (1) served in office after January 1, 1981, and whose total service at the time of termination is not less than 12 years, or (2) have completed one or more terms of office, but less than 12 years, and who agree to and do pay the full costs of the health and welfare benefits.

(c) The legislative body of a local agency that is a local hospital district may provide for any health and welfare benefits for the benefit of members of its medical staff, employees of the medical

staff members, and the dependents of both groups on a self-pay basis.

SEC. 2. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local hospital district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the hospital administrator, secretary, and other officers and employees of any hospitals of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things which an individual might do which are necessary for, and to the advantage of, a hospital and a nurses' training school, or a child care facility for the benefit of employees of the hospital or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services and facilities, retirement programs, services and facilities, chemical

dependency programs, services and facilities, or other health care programs, services and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

"Health facilities," as used in this subdivision, means those facilities defined in either Section 15432 of the Government Code or Section 1250 and specifically includes freestanding chemical dependency recovery units.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations which are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the hospital district.

(p) (1) To transfer, with or without consideration, any part of its assets to one or more nonprofit corporations to operate and maintain the assets for the benefit of the communities served by the district. The initial members of the board of directors of the nonprofit corporation or corporations shall be approved by the board of directors of the hospital district and shall be residents of the district. This subdivision does not invalidate or affect any transfers made prior to March 1, 1985, pursuant to this subdivision.

(2) Nothing in this section, including subdivision (j), shall be construed to permit a local hospital district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility which is not located within the boundaries of the hospital district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Corporations, at any location within or without the district for the benefit of residents of communities

served by the district. However, no such activity shall be deemed to result in or constitute the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities which corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage which is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

This section shall not authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

SEC. 3. Section 32126.5 of the Health and Safety Code is amended to read:

32126.5. (a) The board of directors may do any of the following when it determines that the action is necessary for the provision of adequate health services to communities served by the district:

(1) Enter into contracts with health provider groups, community service groups, and independent physicians and surgeons for the provision of health services.

(2) Provide assistance or make grants to nonprofit provider groups and clinics already functioning in the community.

(3) Finance experiments with new methods of providing adequate health care.

(b) Nothing in this section shall authorize activities which corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

SEC. 4. Section 32128 of the Health and Safety Code is amended to read:

32128. (a) The rules of the hospital, established by the board of directors pursuant to this article, shall include all of the following:

(1) Provision for the organization of physicians and surgeons, podiatrists, and dentists licensed to practice in this state who are permitted to practice in the hospital into a formal medical staff, with appropriate officers and bylaws and with staff appointments on an annual or biennial basis.

(2) Provision for a procedure for appointment and reappointment of medical staff as provided by the standards of the

Joint Commission on Accreditation of Healthcare Organizations.

(3) Provisions that the medical staff shall be self-governing with respect to the professional work performed in the hospital; that the medical staff shall meet in accordance with the minimum requirements of the Joint Commission on Accreditation of Healthcare Organizations; and that the medical records of the patients shall be the basis for such review and analysis.

(4) Provision that accurate and complete medical records be prepared and maintained for all patients.

For purposes of this paragraph medical records include, but are not limited to, identification data, personal and family history, history of present illness, physical examination, special examinations, professional or working diagnoses, treatment, gross and microscopic pathological findings, progress notes, final diagnosis, condition on discharge, and other matters as the medical staff shall determine.

(5) Limitations with respect to the practice of medicine and surgery in the hospital as the board of directors may find to be in the best interests of the public health and welfare, including appropriate provision for proof of ability to respond in damages by applicants for staff membership, as long as no duly licensed physician and surgeon is excluded from staff membership solely because he or she is licensed by the Board of Osteopathic Examiners.

(b) The rules of the hospital shall, insofar as consistent with this article, be in accord with and contain minimum standards not less than the rules and standards of private or voluntary hospitals . Unless specifically prohibited by law, the board of directors may adopt other rules which could be lawfully adopted by private or voluntary hospitals.

CHAPTER 1543

An act to amend and repeal Section 42145 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 42145 of the Public Resources Code is amended to read:

42145. (a) The local governing body may, either by ordinance or resolution, upon the recommendation of the appropriate land use planning agency, propose eligible parcels of property within its jurisdiction as a recycling market development zone.

(b) The proposal of a recycling market development zone shall be based upon the following findings by the local governing body:

(1) The current waste management practices and conditions are

favorable to development of postconsumer waste material markets.

(2) The designation as a recycling market development zone is necessary in order to assist in attracting private sector recycling investments to the area.

(c) (1) Upon appropriation by the Legislature in the annual Budget Act, the board may make low-interest loans to local governing bodies and private business entities within a recycling market development zone from money in the Recycling Market Development Revolving Loan Account, which is hereby created in the Integrated Waste Management Fund, for the purpose of assisting the board and local agencies in complying with Section 40051 and to assist cities and counties in complying with Section 41780.

(2) The board shall establish and collect fees for applications for loans authorized by this section in an amount sufficient to pay its actual costs of administering the revolving loan program. The revenue from the fees shall be deposited in the Recycling Market Development Revolving Loan Account. The board may, upon appropriation by the Legislature in the annual Budget Act, use revenue in the account for the administration of the revolving loan program.

(d) Loans made pursuant to subdivision (c) shall be subject to all of the following requirements:

(1) The terms of any approved loan shall be specified in a loan agreement between the borrower and the board. The loan agreement shall include a requirement that the failure to comply with the agreement shall result in any remaining unpaid amount of the loan, with accrued interest, being immediately due and payable. Notwithstanding any term of the agreement, any borrower of a loan that the board approves shall repay the principal amount, plus interest on the basis of the rate of return for money in the Pooled Money Investment Account. Except as provided in subdivision (g), all moneys received as repayment and interest on loans under this section shall be deposited in the Recycling Market Development Revolving Loan Account.

(2) The term of any loan under this section shall be not more than 10 years.

(3) The board shall approve only those loan applications which demonstrate the applicant's ability to repay the loan. The highest priority for funding shall be given to projects which demonstrate that there is a market demand for recycling the project's type of postconsumer waste material.

(4) The board shall finance not more than one-half of the cost of any project, or not more than one million dollars ($1,000,000) for loans to any project, whichever is greater.

(5) The Department of Finance may audit the expenditure of the proceeds of any loan made pursuant to this section.

(e) Upon authorization by the Legislature in the annual Budget Act, the Controller shall transfer the sum of five million dollars ($5,000,000) from the Integrated Waste Management Account in the

Integrated Waste Management Fund to the Recycling Market Development Revolving Loan Account for the purpose of making loans pursuant to subdivision (c). This amount shall be a loan to the Recycling Market Development Revolving Loan Account, repayable with interest at the rate of return for money in the Pooled Money Investment Account, and shall be repaid on or before July 1, 1997.

(f) The board shall submit a report to the Legislature on the loan program provided for in subdivision (c) on or before January 1, 1996.

(g) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed. Notwithstanding this section, any loan outstanding on July 1, 1997, shall be repaid as provided in paragraph (2) of subdivision (d) until repaid in full. Any unexpended funds in the Recycling Market Development Revolving Loan Account on July 1, 1997, shall be transferred to the Integrated Waste Management Account, and any proceeds from loans outstanding on that date shall be deposited in the Integrated Waste Management Account.

CHAPTER 1544

An act to amend Sections 20393, 20452, and 20652 of, and to add Section 20105.5 to, the Government Code, relating to public retirement systems, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 20105.5 is added to the Government Code, to read:

20105.5. The board may employ six additional auditors to audit reports submitted by employers.

SEC. 2. Section 20393 of the Government Code is amended to read:

20393. Notwithstanding any other provision of this part, a member who is credited with less than the years of service specified in Article 1 (commencing with Section 20950) of Chapter 8 of this part who enters employment as a member of a public retirement system supported, in whole or in part, by state funds, including the University of California Retirement System, or as a member of a retirement system established under the County Employees Retirement Law of 1937, within six months of leaving state service, shall have the right to elect to leave accumulated contributions on deposit in the retirement fund. Failure to make an election to

withdraw accumulated contributions shall be deemed an election to leave accumulated contributions on deposit in the retirement fund. This section shall also apply to a member who is subject to Section 21251.146, except that no election to leave contributions on deposit is required for service that is subject to Section 21251.146.

An election to allow accumulated contributions to remain in the retirement fund may be revoked by the member at any time, except: (1) while the member is employed in state service in a position in which the member is not excluded from membership with respect to that service; or (2) while the member is in service as a member of a public retirement system supported, in whole or in part, by state funds, including the University of California Retirement System; or (3) while the member is in service, entered within six months after discontinuing state service, as a member of a retirement system established under the County Employees Retirement Law of 1937. All contributions accumulated up to the time of revocation may then be withdrawn. A member whose membership continues under this section is subject to the same age and disability requirements as apply to other members for service or for disability retirement. After the qualification of the member for retirement by reason of age, which shall be the lowest age applicable to any membership category in which the member has credited service, or disability, the member shall be entitled to receive a retirement allowance based upon the amount of the member's accumulated contributions and service standing to the member's credit at the time of retirement and on the employer contributions held for the member and calculated in the same manner as for other members, except that the provisions in this part for minimum service and disability retirement allowances shall not apply to the member, unless the member meets the minimum service requirements. If a basic death benefit becomes payable under Article 5 (commencing with Section 21360) of Chapter 9 of this part because of death before retirement of a member, the average annual compensation earnable in the year preceding the date of termination of that service, rather than in the year preceding death, shall be used in computing the benefit under Article 5 of Chapter 9.

The provisions of this section, as it read prior to June 21, 1971, shall continue with respect to a member whose membership continued under this section on that date.

SEC. 3. Section 20452 of the Government Code is amended to read:

20452. (a) On request of the board, the public agency shall furnish data concerning its employees as the board requires to make the necessary valuations and investigation into the experience among the employees.

(b) On request of the board, the public agency shall furnish the board a copy of any third party or internal audit performed by or for the public agency.

SEC. 4. Section 20652 of the Government Code is amended to

read:

20652. If the state service or membership herein of a member is discontinued, he or she shall, upon his or her request, be paid his or her accumulated contributions, if, in the opinion of the board, he or she is permanently separated from state service or membership by reason of the discontinuance.

This section shall not apply to discontinuance of state service or membership as a result of retirement or death on account of which a basic, a limited, or a special death benefit is payable.

SEC. 5. The Board of Administration of the Public Employees' Retirement System shall study ways to improve the accuracy of the payroll reporting procedures of public agencies. The study shall consider imposing civil penalties for willful misreporting, requiring reporting by public agencies under penalty of perjury, and allowing the system to require a lump sum payment from the employer for any retirement shown not to be actuarially funded as a result of incorrect reporting.

In addition, the study shall consider allowing the system to retroactively adjust a pension which is shown to be based upon incorrectly reported compensation.

The study shall be submitted to the Legislature on or before January 1, 1991, and shall contain suggestions for legislation, if needed.

SEC. 6. This act shall become operative on December 1, 1990.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify the tax status of accumulated retirement contributions, the act must take effect immediately.

CHAPTER 1545

An act to add Division 1.7 (commencing with Section 4980) to the Financial Code, relating to financial institutions.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Division 1.7 (commencing with Section 4980) is added to the Financial Code, to read:

DIVISION 1.7. SECURITIES SALES

4980. (a) Except as provided by subdivision (b), no financial institution doing business in this state, or any other person offering

for sale or selling securities in any financial institution's retail branch office, shall offer any security for sale to the public, at any retail branch office at which deposits are accepted.

(b) The provisions of subdivision (a) shall not apply if a financial institution has received written approval from its regulator to offer or sell securities in a retail branch office as permitted by state or federal law.

(c) For purposes of this section:

(1) "Financial institution" means a depository institution, the deposits of which are insured by a federal deposit insurance agency or instrumentality, or a private share insurance or guaranty arrangement, including, but not limited to, banks, savings banks, savings associations, credit unions, and industrial loan companies.

(2) "Security" or "securities" means any bonds or debentures issued by the financial institution, its parent or holding company, or an affiliated company, which are not investment grade by virtue of the fact that neither they nor the issuer are rated in one of the four highest rating categories by Moody's Investors Service, Inc., or Standard and Poor's Corporation.

(3) "Public" means individuals and includes members of a credit union. "Public" does not include institutional investors as set forth in subdivision (i) of Section 25102 of the Corporations Code.

(4) "Retail branch office" means only that part of a financial institution's premises open to the public for purposes of accepting insured deposits. "Retail branch office" does not include other floors, facilities, or physically separate office quarters occupied by the financial institution that are located in the same building or office complex and that are not open to the public for the purpose of accepting deposits.

(5) "Deposit" includes shares of credit unions and investment certificates of industrial loan companies.

(d) This section shall remain in effect until January 1, 1994, and as of that date is repealed unless a later enacted statute deletes or extends that date.

4981. Any financial institution doing business in this state, or any other person, that sells to the public at any retail branch office at which deposits are accepted, any security which is not a deposit, and which is not insured by an agency or instrumentality of the United States, or a private share insurance or guaranty arrangement, shall provide the customer a disclosure statement as defined in subdivision (a).

(a) For the purposes of this section:

(1) "Disclosure statement" means, in addition to any other disclosure required by law, a disclosure in writing, in accordance with subdivision (b), provided to a customer each time the customer purchases securities from an employee or any other person in a retail branch office.

(2) "Financial institution" means a depository institution, the deposits of which are insured by a federal deposit insurance agency

or instrumentality, or a private share insurance or guaranty arrangement, including, but not limited to, banks, savings banks, savings associations, credit unions, and industrial loan companies.

(3) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, or any other security within the meaning of Section 25019 of the Corporations Code.

(4) "Public" means individuals and includes members of a credit union. "Public" does not include institutional investors as set forth in subdivision (i) of Section 25102 of the Corporations Code.

(5) "Retail branch office" means only that part of a financial institution's premises open to the public for purposes of accepting insured deposits.

(6) "Deposit" includes shares of credit unions and investment certificates of industrial loan companies.

(b) Any disclosure statement provided pursuant to this section shall contain a sentence in at least 10-point bold type to the effect that: "I understand that the product or products I am purchasing or may purchase are not deposits and may not be insured by an agency or instrumentality of the United States such as the Federal Deposit Insurance Corporation (FDIC)." For credit unions, the disclosure statement provided pursuant to this section shall contain a sentence in at least 10-point bold type to the effect that: "I understand that the product or products I am purchasing or may purchase are not deposits and may not be insured by an agency of the United States such as National Credit Union Share Insurance Fund (NCUSIF), or a private share insurance or guaranty arrangement." With respect to agreements for the purchase of securities executed by a customer at a retail branch office of the institution which accepts deposits, a customer shall be required to acknowledge in writing that he or she has received and read this statement.

(c) Notwithstanding the provisions of subdivision (b), in the case of account relationships opened, or securities sold, by telephone or electronic order, the requirements of this section are met if the disclosure statement is provided at the time the new account documents are sent to the customer.

(d) The provisions of this section shall not apply to sales of securities or contracts entered into for the purchase of securities prior to January 1, 1991.

4982. Any violation of this division by a bank is a violation of Division 1 (commencing with Section 99); a violation by a savings association is a violation of Division 2 (commencing with Section 5000); a violation by a credit union is a violation of Division 5 (commencing with Section 14000); and a violation by an industrial loan company is a violation of Division 7 (commencing with Section 18000).

4983. Nothing in this division shall be construed or interpreted to mean that this division in any way gives a financial institution the authority to offer or sell any type of security that it could not otherwise offer or sell under state or federal law.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1546

An act to amend Section 480.3 of, and to amend, repeal, and add Section 480.4 of, the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 480.3 of the Revenue and Taxation Code is amended to read:

480.3. (a) Each county assessor and recorder shall make available, without charge and upon request, a form entitled "Preliminary Change of Ownership Report," which transferees of real property shall complete and may file with the recorder concurrent with the recordation of any document effecting a change of ownership. The form shall be signed by the transferee or an officer of the transferee and shall not be signed by an agent acting for a transferee.

(b) If a document evidencing a change of ownership is presented to the recorder for recordation without the concurrent filing of a preliminary change of ownership report, the recorder may charge an additional recording fee of twenty dollars ($20).

(c) Noncompliance with this section by the transferee shall not delay or preclude the recordation of documents if the additional fee specified in subdivision (b) is tendered.

(d) The authority to obtain information pursuant to this section is in addition to, and not in lieu of, any existing authority the assessor has under this article.

(e) In cases where the county tax collector files purchaser's deeds with respect to a sale for defaulted taxes, the information given to the assessor pursuant to Sections 3716 and 3811 shall be deemed to constitute compliance with this section.

(f) The filing of a preliminary change of ownership report or the payment of an additional recording fee shall not be required of any

intermediate transferee of property. For purposes of this subdivision, "intermediate transferee" means any transferee who is acting as both a transferee and the transferor of the same property as part of a series of simultaneous transfers which affect that property and who records the transfer documents and any other recorded documents related to the transfer in consecutive order at one time.

(g) Except as prescribed in subdivisions (e) and (f), this section shall apply to changes of ownership occurring on or after July 1, 1985.

SEC. 2. Section 480.4 of the Revenue and Taxation Code is amended to read:

480.4. (a) The preliminary change of ownership report referred to in Section 480.3 shall be in substantially the following form:

PRELIMINARY CHANGE OF OWNERSHIP REPORT

(To be completed by transferee (buyer) prior to transfer of subject property in accordance with Section 480.3 of the Revenue & Taxation Code.)

FOR RECORDER: Recorded Book , Page , Date Document No.

SELLER:
BUYER:
A.P. #(s):
LEGAL DESCRIPTION:
ADDRESS (if improved):
MAIL TAX INFORMATION TO: Name:
Address:

FOR ASSESSOR'S USE ONLY:

The property which you acquired may be subject to a supplemental tax assessment in an amount to be determined by the (name of county) County Assessor. For further information on your supplemental roll tax obligation, please call the (name of county) County Assessor at (phone number).

1. Transfer Information:
   A. Was this transfer solely between husband & wife, addition of a spouse, death of a spouse, divorce settlement, etc.? a. ( ) YES b. ( ) NO
   B. Was this transaction only a correction of the name(s) of the person(s) holding title to the property? a. ( ) YES b. ( ) NO
   C. Was this document recorded to create, terminate, or reconvey a lender's interest in the property? a. ( ) YES b. ( ) NO
   D. Was this document recorded to substitute a trustee under a deed of trust, mortgage, or other similar document? a. ( ) YES b. ( ) NO
   E. Did this transfer result in the creation of a joint tenancy in which the seller (transferor) remains as one of the joint tenants? a. ( ) YES b. ( ) NO
   F. Return of property to person who created the joint tenancy? a. ( ) YES b. ( ) NO
   G. Is this transfer of property:
      a. to a trust for the benefit of the grantor? a. ( ) YES b. ( ) NO
      b. to a revocable trust a. ( ) YES b. ( ) NO
      c. to a trust from which the property reverts to the grantor within 12 years? a. ( ) YES b. ( ) NO
   H. If this property is the subject of a lease, is the lease for a term of less than 35 years including written options? a. ( ) YES b. ( ) NO
   I. If the conveying document constitutes an exclusion from a change in ownership as defined in Section 62 of the Revenue & Taxation Code for any reason other than those listed above, set forth the specific exclusion claimed:

* IF YOU HAVE ANSWERED "NO" TO QUESTIONS A THROUGH H, INCLUSIVE, AND HAVE NOT CLAIMED ANY OTHER EXCLUSIONS UNDER I, PLEASE COMPLETE BALANCE OF FORM. OTHERWISE SIGN AND DATE.

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2. Type of property transferred:
   a. ( ) Single-family residence
   b. ( ) Multiple-family residence (no. of units: ____)
   c. ( ) Co-op
   d. ( ) Condo
   e. ( ) Mobilehome
   f. ( ) Unimproved lot
   g. ( ) Commercial/Industrial
   h. ( ) Other (description: _____)
3. Intended as principal residence? a. ( ) YES b. ( ) NO
4. Transfer is by:
   a. ( ) Deed; b. ( ) Contract of sale;
   c. ( ) Other—explain: _____
5. Is less than 100% of property being transferred? a. ( ) YES b. ( ) NO
6. a. ( ) Date of transfer or; b. ( ) If an inheritance, date of death _____
7. Is or will, the property produce(ing) income? a. ( ) YES b. ( ) NO
8. If answer to Question 4 is yes, is income pursuant to:
   a. ( ) Lease; b. ( ) Contract; c. ( ) Mineral rights;
   d. ( ) Other—explain: _____
9. Did the transfer of this property involve the trade or exchange of other real property? a. ( ) YES b. ( ) NO
10. a. Total Purchase Price or Acquisition Price, If Exchanged: $ _____
    b. Cash Downpayment or Value of Trade (excluding closing costs): $ _____
    c. 1st Deed of Trust $ _____
    at _____ % interest for _____ years.
    New Loan ( ); Assumed Existing Loan Balance ( ); FHA ( ); Cal-Vet ( ); VA ( ); Bank ( ); Finance Co. ( ); Savings & Loan ( ); Loan Carried By Seller ( ); All Inclusive ( ); Balloon Payment: Yes ( ) No ( ).
    d. 2nd Deed of Trust $ _____
    at _____ % interest for _____ years.
    New Loan ( ); Assumed Existing Loan Balance ( ); Loan Carried By Seller ( ); Balloon Payment: Yes ( ) No ( ).
    e. Was other type of financing involved not covered in (c) or (d), above? a. ( ) YES b. ( ) NO
    f. Improvement Bond: Yes ( ) No ( ); Outstanding Balance $ _____
11. Was any personal property involved in purchase other than a mobilehome on real property? a. ( ) YES b. ( ) NO c. AMOUNT _____

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I certify that the foregoing is true, correct, and complete to the best of my knowledge and belief.

Signed _____ Date: _____
(New Owner/Corporate Officer)

Address if other than above _____

Phone No. Where You Are Available From 8:00 am–5:00 pm: ( ) _____

(NOTE: The Assessor may contact you for further information)

(b) The State Board of Equalization may revise the preliminary change of ownership report, as necessary, for the purpose of maintaining statewide uniformity in the contents of the report.

(c) This section shall remain in effect only until July 1, 1991, and as of that date is repealed.

SEC. 3. Section 480.4 is added to the Revenue and Taxation Code, to read:

480.4. (a) The preliminary change of ownership report referred to in Section 480.3 shall be in substantially the following form:

PRELIMINARY CHANGE OF OWNERSHIP REPORT

(To be completed by transferee (buyer) prior to transfer of subject property in accordance with Section 480.3 of the Revenue and Taxation Code.)

FOR RECORDER: Recorded Book , Page , Date Document No.

SELLER:
BUYER:
A.P. #(s):
LEGAL DESCRIPTION:
ADDRESS (if improved):
MAIL TAX INFORMATION TO: Name:
Address:

FOR ASSESSOR'S USE ONLY:

NOTICE: A lien for property taxes applies to your property on March 1 of each year for the taxes owing in the following fiscal year, July 1 through June 30. One-half of these taxes is due November 1, and one-half is due February 1. The first installment becomes delinquent on December 10, and the second installment becomes delinquent on April 10. One tax bill is mailed before November 1 to the owner of record. If this transfer occurs after March 1 and on or before December 31, you may be responsible for the second installment of taxes due February 1.

The property which you acquired may be subject to a supplemental tax assessment in an amount to be determined by the (name of county) County Assessor. For further information on your supplemental roll tax obligation, please call the (name of county) County Assessor at (phone number).

1. Transfer Information:
   - A. Was this transfer solely between husband & wife, addition of a spouse, death of a spouse, divorce settlement, etc.? a. ( ) YES b. ( ) NO
   - B. Was this transaction only a correction of the name(s) of the person(s) holding title to the property? a. ( ) YES b. ( ) NO
   - C. Was this document recorded to create, terminate, or reconvey a lender's interest in the property? a. ( ) YES b. ( ) NO
   - D. Was this document recorded to substitute a trustee under a deed of trust, mortgage, or other similar document? a. ( ) YES b. ( ) NO
   - E. Did this transfer result in the creation of a joint tenancy in which the seller (transferor) remains as one of the joint tenants? a. ( ) YES b. ( ) NO
   - F. Return of property to person who created the joint tenancy? a. ( ) YES b. ( ) NO
   - G. Is this transfer of property:
     - a. to a trust for the benefit of the grantor? a. ( ) YES b. ( ) NO
     - b. to a revocable trust a. ( ) YES b. ( ) NO
     - c. to a trust from which the property reverts to the grantor within 12 years? a. ( ) YES b. ( ) NO
   - H. If this property is the subject of a lease, is the lease for a term of less than 35 years including written options? a. ( ) YES b. ( ) NO
   - I. If the conveying document constitutes an exclusion from a change in ownership as defined in Section 62 of the Revenue & Taxation Code for any reason other than those listed above, set forth the specific exclusion claimed:

*IF YOU HAVE ANSWERED "NO" TO QUESTIONS A THROUGH H, INCLUSIVE, AND HAVE NOT CLAIMED ANY OTHER EXCLUSIONS UNDER I, PLEASE COMPLETE BALANCE OF FORM. OTHERWISE SIGN AND DATE.

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2. Type of property transferred:
   a. ( ) Single-family residence
   b. ( ) Multiple-family residence (no. of units: ____)
   c. ( ) Co-op
   d. ( ) Condo
   e. ( ) Mobilehome
   f. ( ) Unimproved lot
   g. ( ) Commercial/Industrial
   h. ( ) Other (description: _____)
3. Intended as principal residence? a. ( ) YES b. ( ) NO
4. Transfer is by:
   a. ( ) Deed; b. ( ) Contract of sale;
   c. ( ) Other—explain: _____
5. Is less than 100% of property being transferred? a. ( ) YES b. ( ) NO
6. a. ( ) Date of transfer or; b. ( ) If an inheritance, date of death _____
7. Is or will, the property produce(ing) income? a. ( ) YES b. ( ) NO
8. If answer to Question 4 is yes, is income pursuant to:
   a. ( ) Lease; b. ( ) Contract; c. ( ) Mineral rights;
   d. ( ) Other—explain: _____
9. Did the transfer of this property involve the trade or exchange of other real property? a. ( ) YES b. ( ) NO
10. a. Total Purchase Price or Acquisition Price, If Exchanged: $ _____
    b. Cash Downpayment or Value of Trade (excluding closing costs): $ _____
    c. 1st Deed of Trust $ _____
    at_____ % interest for_____ years.
    New Loan ( ); Assumed Existing Loan Balance ( ); FHA ( ); Cal-Vet ( ); VA ( ); Bank ( ); Finance Co. ( ); Savings & Loan ( ); Loan Carried By Seller ( ); All Inclusive ( ); Balloon Payment: Yes ( ) No ( ).
    d. 2nd Deed of Trust $ _____
    at_____ % interest for_____ years.
    New Loan ( ); Assumed Existing Loan Balance ( ); Loan Carried By Seller ( ); Balloon Payment: Yes ( ) No ( ).
    e. Was other type of financing involved not covered in (c) or (d), above? a. ( ) YES b. ( ) NO
    f. Improvement Bond: Yes ( ) No ( ); Outstanding Balance $ _____
11. Was any personal property involved in purchase other than a mobilehome on real property? a. ( ) YES b. ( ) NO c. AMOUNT_____

203850

I certify that the foregoing is true, correct, and complete to the best of my knowledge and belief.

Signed _____ Date: _____
(New Owner/Corporate Officer)

Address if other than above _____

Phone No. Where You Are Available From 8:00 am–5:00 pm: ( ) _____

(NOTE: The Assessor may contact you for further information.)

(b) The State Board of Equalization may revise the preliminary change of ownership report, as necessary, for the purpose of maintaining statewide uniformity in the contents of the report.

(c) This section shall become operative on July 1, 1991.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1547

An act relating to state buildings, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. (a) The Director of General Services, as agent for the State Librarian, may construct on site 5, Capital Area Plan, a Library and Courts Annex Building Complex, parking facilities, a connecting tunnel to the Library-Courts Building, and any other improvements, betterments, and facilities related thereto. The annex building shall be for the primary use of the California State Library.

(b) Revenue bonds, negotiable notes, and negotiable bond anticipation notes may be issued by the State Public Works Board pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) of Division 3 of Title 2 of the Government Code), to finance the construction and equipping of the Library and Courts Annex Building Complex, parking facilities, a connecting tunnel to the Library-Courts Building, and any other improvements, betterments, and facilities related thereto as described in subdivision (a).

(c) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of construction and equipping and furnishing of the complex and facilities, the cost of working drawings, sums necessary to pay financing costs,

including interest during construction, and a reasonable reserve fund. Construction costs shall not exceed twenty-five million dollars ($25,000,000) based on the Lee-Saylor Cost Index 433.

(d) The amount of negotiable bond anticipation notes sold shall not exceed the amount of revenue bonds and negotiable notes authorized by this act. Any augmentation of the approved project costs shall be subject to Section 13332.11 of the Government Code. The board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Section 16312 and Section 16313 of the Government Code.

(e) At least 20 days prior to the award of the principal bid for the construction of the complex, the Director of General Services shall notify the Chairpersons of the Senate Committee on Appropriations and the Assembly Committee on Ways and Means of the amount of the bid.

(f) (1) The Director of General Services may lease the complex and facilities financed with the proceeds of the revenue bonds, negotiable notes, or negotiable bond anticipation notes from the board pursuant to Section 15817 of the Government Code for the primary use of the California State Library.

(2) The Director of General Services shall notify the Chairperson of the Joint Legislative Budget Committee of the director's intention to execute any lease agreement authorized by paragraph (1) at least 20 days prior to its execution.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that California State Library collections may be saved from deterioration as quickly as possible and the Court of Appeal may properly plan for its future space needs, it is necessary for this act to take effect immediately.

CHAPTER 1548

An act to amend Section 5681 of the Business and Professions Code, relating to landscape architecture, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 5681 of the Business and Professions Code is amended to read:

5681. The amount of fees prescribed by this chapter is that fixed

by the following schedule:

(a) The application fee for examination shall be fixed by the board in an amount not to exceed four hundred twenty-five dollars ($425).

(b) The fee for an original certificate shall be fixed by the board in an amount not to exceed four hundred dollars ($400), except that, if the certificate is issued less than one year before the date on which it will expire, then the fee shall equal 50 percent of the fee fixed by the board for an original certificate. The board may, by appropriate regulation, provide for the waiver or refund of the initial certificate fee where the certificate is issued less than 45 days before the date on which it will expire.

(c) The fee for a temporary certificate shall be fixed by the board in an amount not to exceed one hundred dollars ($100).

(d) The fee for a duplicate certificate shall be fixed by the board in an amount not to exceed fifty dollars ($50).

(e) The renewal fee shall be fixed by the board in an amount as it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, but not to exceed four hundred dollars ($400).

(f) The penalty for failure to notify the board of a change of address within 30 days from an actual change in address shall be fixed by the board in an amount not to exceed fifty dollars ($50).

(g) The delinquency fee shall be 50 percent of the renewal fee for the certificate in effect on the date of the renewal of the certificate, but not less than fifty dollars ($50) nor more than two hundred dollars ($200).

(h) The fee for a branch office shall be fixed by the board in an amount not to exceed fifty dollars ($50).

(i) The fee for filing an application for approval of a school pursuant to Section 5650 shall be set by the board at an amount not to exceed the cost of the approval process, but not to exceed six hundred dollars ($600) charged and collected on an biennial basis. Prior to June 30, 1991, the Board of Landscape Architects and the Department of Consumer Affairs shall report to the appropriate policy and fiscal committees of the Legislature with a cost comparison of developing a new licensing examination independent of the national examination.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The California State Board of Landscape Architects will be experiencing an unexpected increase in the fee for the licensing examination which is currently administered by a national organization and in order to meet this increase in those fees, it is necessary that the act go into immediate effect.

CHAPTER 1549

An act to add Sections 1799.101 and 1799.102 to the Civil Code, relating to consumer rights.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 1799.101 is added to the Civil Code, to read:

1799.101. (a) For the purposes of this section, the following terms are defined as follows:

(1) "Adverse information" means information directly or indirectly indicating that a delinquency has occurred, because a cosigner has not complied with the contractual provisions of a consumer credit contract.

(2) "Collection action" means requesting a cosigner to pay all or part of the obligation on a consumer credit contract.

(3) "Cosigner" means a natural person, other than the primary obligor or the spouse of the primary obligor, who renders himself or herself liable for the obligation on a consumer credit contract without compensation. The term includes a person whose signature is requested by a creditor as a condition to granting credit to another person. A person who does not receive goods, services, or money in return for executing a consumer credit contract does not receive compensation within the meaning of this section. "Cosigner" does not include a joint applicant for open-end credit pursuant to subdivision (c) of Section 1799.91. A person is a cosigner within the meaning of this section whether or not he or she is designated as such on a consumer credit contract.

(4) "Delinquency" means a failure to make timely payment to the creditor of all or a portion of any installment or other moneys due under a consumer credit contract.

(5) "Notice" means a writing which describes, recites, or otherwise refers to a delinquency.

(6) "Obligation" means an indebtedness incurred by an individual for personal, family, or household purposes.

(7) "Person" means an individual, firm, partnership, association, or corporation.

(8) "Primary obligor" means a person, other than the cosigner, who signs a consumer credit contract and assumes an obligation as a debtor under that contract.

(b) Except as provided in subdivisions (d) and (e), no creditor shall provide any adverse information to a consumer credit reporting agency regarding a delinquency on a consumer credit contract for which there is a cosigner, unless, at or before the time the information is provided to the consumer credit reporting agency, the same information is provided by written notice to the cosigner.

(c) No creditor shall provide any information regarding the cosigner's obligation on a consumer credit contract to a debt collector, as defined in subdivision (c) of Section 1788.2, until notice has been provided to the cosigner under subdivision (b).

(d) The notice requirements of subdivisions (b) and (c) do not apply to any cosigner whose address, as shown in the creditor's records respecting the consumer credit contract, is the same as the primary obligor.

(e) The notice requirements of subdivisions (b) and (c) shall be satisfied by mailing a copy of the required notice to the cosigner at the cosigner's address, as shown in the creditor's records respecting the consumer credit contract. However, if more than one cosigner reside at the same address, as shown in the creditor's records respecting the consumer credit contract, a notice addressed to any cosigner at that address shall be deemed notice to all the cosigners residing at that address.

(f) Nothing in this section shall require any particular form or language with respect to a notice of delinquency sent to either a primary obligor or cosigner.

(g) Within a reasonable time after a cosigner has cured a delinquency or delinquencies that have been reported to a consumer credit reporting agency and included in the cosigner's file maintained by the consumer credit reporting agency, the consumer credit reporting agency shall indicate in the file that the cosigner made that payment.

(h) Nothing in this section shall be construed to require notice of a delinquency to be provided to a cosigner in any instance not expressly specified in this section, or to provide notice to persons other than cosigners.

(i) This section shall become operative on July 1, 1992.

SEC. 2. Section 1799.102 is added to the Civil Code, to read:

1799.102. (a) A cosigner who suffers a loss as a result of a violation of Section 1799.101 may bring an action to recover actual damages or two hundred fifty dollars ($250), whichever is greater, and reasonable attorney fees.

(b) The cosigner shall, not less than 30 days prior to bringing an action pursuant to subdivision (a), notify the person alleged to have violated Section 1799.101 of the cosigner's intention to bring an action. The notice shall include a statement of the specific evidence that proves the loss suffered by the cosigner. If within 25 days after the date of receiving the notice, the person alleged to have violated Section 1799.101 tenders to the cosigner an amount equal to the loss, or otherwise resolves the matter to the cosigner's satisfaction, the cosigner shall be barred from further recovery of that loss, including reasonable attorney fees.

(c) This section shall become operative on July 1, 1992.

CHAPTER 1550

An act to amend Sections 11745 and 11751.51 of, and to add Section 11661.6 to, the Insurance Code, and to amend Sections 27, 28, 55.5, 110, 112, 123.5, 123.6, 129, 129.5, 132a, 139, 139.2, 139.3, 139.5, 139.6, 3208.3, 4061, 4062, 4062.2, 4062.5, 4064, 4067, 4067.5, 4453, 4600, 4625, 4628, 4635, 4636, 4637, 4638, 4642, 4644, 4650, 4702, 4703.5, 4850, 4903.1, 4903.4, 4904, 4906, 5270, 5271, 5272, 5273, 5275, 5307.1, 5401, 5402, 5500, 5502, and 5703.5 of, to amend, add, and repeal Section 62.5, to add Sections 29, 139.1, 5278, 5401.5, 5401.6, 5501.5, 5501.6, and 5502.5 to, to repeal Section 4065 of, and to repeal and add Section 4624 of, the Labor Code, and to amend Section 2629 of the Unemployment Insurance Code, relating to workers' compensation.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 11661.6 is added to the Insurance Code, to read:

11661.6. (a) An insurer shall not insure an employer against his or her obligation to reimburse the insurer for the amount of increase in indemnity payment as provided for by subdivision (e) of Section 4650 of the Labor Code. Every contract insuring against liability for compensation and every compensation policy shall provide that the insured employer is obligated to reimburse the insurer for the amount of increase in indemnity payment required by Section 4650 of the Labor Code, if the late indemnity payment which gives rise to the increase in the amount of payment is due less than seven days after the insurer receives the completed claim form from the employer.

(b) An insurer shall not report the amount of any increase in indemnity required by Section 4650 of the Labor Code as incurred indemnity to the Insurance Commissioner's designated statistical agent.

SEC. 2. Section 11745 of the Insurance Code is amended to read:

11745. (a) There is in the Department of Insurance the Workers' Compensation Rate Study Commission, which shall be hereafter referred to in this article as the "commission." The commission shall consist of eight members, two of whom shall be appointed by the Senate Committee on Rules, two of whom shall be appointed by the Speaker of the Assembly, and four of whom shall be appointed by the Governor. Each member of the commission shall be, or shall have served as, the dean or its administrative equivalent of the school of business, public policy, or public administration at an accredited California university or be a tenured faculty member of the school of business, public policy, or public administration at an accredited California university. In no event shall a commission member have

been, within the last 10 years, a full-time or part-time employee of other than an accredited educational institution. Acceptance of occasional, intermittent, outside income from consulting or public appearances shall not constitute full-time or part-time employment.

(b) The Governor shall summon the commission to its first meeting, whereupon, as its first order of business, the commission shall designate one of its members as chairperson.

(c) Members of the commission shall serve without compensation, but shall be reimbursed for all necessary expenses actually incurred in the performance of their duties and a per diem allowance of one hundred dollars ($100) for each day spent in meetings of the commission.

(d) All vacancies in commission membership shall be filled by whichever appointing authority appointed the person who vacated the position.

(e) The commission shall hold meetings as it deems necessary to fulfill its purpose. All meetings and hearings held by the commission shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(f) The Department of Insurance shall provide staff and research assistance to the commission. The commission shall have the additional authority to contract with and engage the services of outside resources to conduct research, under the direction and control of the commission, necessary to the timely completion of its purpose. However, in the event the commission exceeds its budgetary authorization in determining its research needs, the planned research may be conducted only if the Department of Insurance determines sufficient private or public funds are available in the department's current budget to cover the additional costs imposed by the research.

SEC. 3. Section 11751.51 of the Insurance Code is amended to read:

11751.51. (a) The commissioner shall require the licensed rating organization designated as his or her statistical agent to monitor and measure changes in the cost of the various components of workers' compensation which may be affected by the changes enacted in the 1989–90 Regular Session of the Legislature. This shall include, but not be limited to, the change in costs of providing medical treatment, temporary disability benefits, permanent disability benefits, vocational rehabilitation services, resolving medical disputes, evaluating permanent partial disability, and providing compensation for psychiatric injuries. The commissioner shall submit to the Governor and to the Legislature by July 1, 1990, the methodology proposed to be used for the purposes of this section, and the collection of data shall commence not earlier than September 1, 1990, but not later than January 1, 1991. No later than January 1, 1993, the rating organization shall quantify any identified changes as a percentage of total incurred losses and shall report this percentage

to the Insurance Commissioner. The rating organization shall continue to report annually through January 1, 1998.

(b) The commissioner shall have 60 days from the date the report is filed by the rating organization with his or her office to verify the methodology utilized, the accuracy and reliability of the results obtained, and the percentage calculated pursuant to this section, by the rating organization. The commissioner thereupon shall submit a report to the Governor and the Legislature by April 1, 1993, and annually thereafter, which describes the methodology utilized, the accuracy and reliability of the results obtained, and the percentage calculated pursuant to this section.

(c) This section shall become inoperative on July 1, 1998.

SEC. 4. Section 27 of the Labor Code is amended to read:

27. Whenever the term "referee" is used in this code in connection with the workers' compensation law, the term shall mean "workers' compensation judge." This section shall not apply to settlement conference referees hired to conduct the settlement conferences required by subdivision (d) of Section 5502.

SEC. 5. Section 28 of the Labor Code is amended to read:

28. For injuries occurring on and after January 1, 1991, whenever the term "independent medical examiner" is used in this code, the term shall mean "qualified medical evaluator."

SEC. 6. Section 29 is added to the Labor Code, to read:

29. "Medical director" means the physician appointed by the Industrial Medical Council pursuant to Section 122.

SEC. 7. Section 55.5 of the Labor Code is amended to read:

55.5. (a) There is in the Department of Industrial Relations, a Health and Safety Commission, consisting of six members. The director shall appoint three members representing organized labor, including one worker who has been injured on the job, and three members representing employers. No action of the commission shall be valid unless concurred in by not less than two members representing organized labor and two members representing employers.

(b) The commission shall review and approve applications from employers and employee organizations, as well as applications submitted jointly by an employer organization and an employee organization, for grants to assist in establishing effective occupational injury and illness prevention programs. The commission shall establish policies for the evaluation of these applications and shall give priority to applications proposing to target high-risk industries and occupations, such as those with high injury or illness rates, and those in which employees are exposed to one or more hazardous substances or conditions or where there is a demonstrated need for research to determine effective strategies for the prevention of occupational illnesses or injuries. The commission may utilize department staff it deems necessary.

(c) Civil and administrative penalties assessed pursuant to Sections 129.5 and 4628 shall be deposited in the Workplace Health

and Safety Revolving Fund, which is hereby created in the State Treasury. Proceeds of the fund shall, when appropriated by the Legislature, be expended by the department, upon approval by the commission, for funding the grants under subdivision (b), and for payment of per diem and traveling expenses under subdivision (d).

(d) Members of the commission shall receive one hundred dollars ($100) for each day of their actual attendance at meetings of the commission and other official business of the commission and shall also receive their actual and necessary traveling expenses incurred in the performance of their duty as a member. Payment of per diem and traveling expenses shall be made from the Workplace Health and Safety Revolving Fund, when appropriated by the Legislature.

SEC. 7.5. Section 62.5 of the Labor Code is amended to read:

62.5. (a) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Proceeds of the fund may be expended by the department, upon appropriation by the Legislature, for the administration of the workers' compensation provisions set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to Section 3702.5, and shall not be used for any other purpose.

(b) The fund shall consist of money from the General Fund appropriated for these purposes, and assessments made pursuant to this section. Assessments may be levied only if the amount appropriated from the General Fund for the purposes specified in subdivision (a) exceeds fifty-six million fifty-seven thousand dollars ($56,057,000), adjusted annually for changes in the costs of living and population as provided in Article XIII B of the California Constitution.

(c) Whenever the total amount appropriated from the Workers' Compensation Administration Revolving Fund, as reflected in the Budget Act for a fiscal year, exceeds the General Fund appropriation in that fiscal year, as reflected in the Budget Act, and the General Fund appropriation meets the criteria of subdivision (b), the director shall levy an assessment upon all employers as defined in Section 3300. The total amount of the assessment shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment. The rules shall require the assessment to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessment to be paid by insured employers expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

(d) This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which

becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7.7. Section 62.5 is added to the Labor Code, to read:

62.5. (a) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Proceeds of the fund may be expended by the department, upon appropriation by the Legislature, for the administration of the workers' compensation program set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to Section 3702.5, and shall not be used for any other purpose.

(b) The fund shall consist of money from the General Fund appropriated for these purposes, and assessments made pursuant to this section. Costs of the program shall be shared on a proportional basis between the General Fund and employer assessments. The General Fund appropriation shall account for 80 percent, and employer assessments shall account for 20 percent, of the total costs of the program.

(c) Assessments shall be levied by the director upon all employers as defined in Section 3300. The total amount of the assessment shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment. The rules shall require the assessment to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessment to be paid by insured employers expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

(d) This section shall become operative on July 1, 1991.

(e) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 8. Section 110 of the Labor Code is amended to read:

110. As used in this chapter:

(a) "Appeals board" means the Workers' Compensation Appeals Board. The title of a member of the board is "commissioner."

(b) "Administrative director" means the Administrative Director of the Division of Workers' Compensation.

(c) "Division" means the Division of Workers' Compensation.

(d) "Medical director" means the physician appointed by the Industrial Medical Council pursuant to Section 122.

SEC. 8.5. Section 112 of the Labor Code is amended to read:

112. The members of the appeals board shall be appointed by the Governor with the advice and consent of the Senate. The term of office of the members appointed prior to January 1, 1990, shall be four years, and the term of office of members appointed on or after

January 1, 1990, shall be six years and they shall hold office until the appointment and qualification of their successors.

Five of the members of the appeals board shall be experienced attorneys at law admitted to practice in the State of California. The other two members need not be attorneys at law. All members shall be selected with due consideration of their judicial temperament and abilities. Each member shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 9. Section 123.5 of the Labor Code is amended to read:

123.5. (a) Workers' compensation judges employed by the administrative director pursuant to this chapter shall be taken from an eligible list of attorneys licensed to practice law in this state, who have the qualifications prescribed by the State Personnel Board. In establishing eligible lists for this purpose, state civil service examinations shall be conducted in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code). Every workers' compensation judge shall maintain membership in the State Bar of California during his or her tenure.

A workers' compensation judge may not receive his or her salary as a workers' compensation judge while any cause before the workers' compensation judge remains pending and undetermined for 90 days after it has been submitted for decision.

(b) Settlement conference referees employed by the administrative director pursuant to this chapter shall be taken from an eligible list of attorneys licensed to practice law in this state, who have the qualifications prescribed in subdivision (d) of Section 5502. In establishing eligible lists for this purpose, state civil service examinations shall be conducted in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code). Every settlement conference referee shall maintain membership in the State Bar of California during his or her tenure.

SEC. 10. Section 123.6 of the Labor Code is amended to read:

123.6. All workers' compensation judges and settlement conference referees employed by the administrative director shall subscribe to the California Code of Judicial Conduct adopted by the Conference of California Judges and shall not otherwise, directly or indirectly, engage in conduct contrary to that code.

SEC. 11. Section 129 of the Labor Code is amended to read:

129. (a) To make certain that injured workers, and their dependents in the event of their death, receive promptly and accurately the full measure of compensation to which they are entitled, the Office of Benefit Assistance and Enforcement shall audit insurers, self-insured employers, and third-party administrators to determine if they have met their obligations under this code. At least half of the audit subjects shall be selected at random, and the remaining subjects shall be selected pursuant to subdivision (b). The

results of audits of insurers shall be provided to the Insurance Commissioner and the results of audits of self-insured employers and third-party administrators shall be provided to the Director of Industrial Relations. Nothing in this section shall restrict the authority of the Director of Industrial Relations or the Insurance Commissioner to audit their licensees.

(b) The Office of Benefit Assistance and Enforcement shall establish priorities for audits based on information obtained from the Benefit Notice program established under Section 138.4, through information and assistance services and other factual information that indicates an insurer, self-insured employer, or third-party administrator is failing to meet its obligations under this division or Division 4 (commencing with Section 3200) or the regulations of the administrative director.

(c) If, as a result of an audit, the Office of Benefit Assistance and Enforcement determines that any compensation, interest, or penalty is due and unpaid to an employee or dependent, the administrative director shall issue and cause to be served upon the insurer, self-insured employer, or third-party administrator a notice of assessment detailing the amounts due and unpaid in each case, and shall order the amounts paid to the person entitled thereto. The notice of assessment shall be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. A copy of the notice of assessment shall also be sent to the affected employee or dependent.

If the amounts are not paid within 30 days after service of a notice of assessment, the employer shall also be liable for reasonable attorney's fees necessarily incurred by the employee or dependent to obtain amounts due. The administrative director shall advise each employee or dependent still owed compensation after this 30-day period of his or her rights with respect to the commencement of proceedings to collect the compensation owed. Amounts unpaid because the person entitled thereto cannot be located shall be paid to the Workplace Health and Safety Revolving Fund. The Director of Industrial Relations shall promulgate rules and regulations establishing standards and procedures for the payment of compensation from moneys deposited into the Workplace Health and Safety Revolving Fund whenever the person entitled thereto applies for compensation.

(d) A determination by the Office of Benefit Assistance and Enforcement or the administrative director that an amount is or is not due to an employee or dependent shall not in any manner limit the jurisdiction or authority of the appeals board to determine the issue.

(e) Annually, commencing on April 1, 1991, the Office of Benefit Assistance and Enforcement shall publish a report detailing the results of audits conducted pursuant to this section during the preceding calendar year. The report shall include the name of each insurer, self-insured employer, and third-party administrator audited

during that period. For each insurer, self-insured employer, and third-party administrator audited the report shall specify the total number of files audited, the number of violations found by type and amount of compensation, interest and penalties payable, and the amount collected for each violation.

These reports shall not identify the particular claim file which resulted in a particular violation or penalty. Except as required by this subdivision or other provisions of law, the contents of individual claim files and auditor's working papers shall be confidential. Disclosure of claim information to the Office of Benefit Assistance and Enforcement pursuant to an audit shall not waive provisions of the Evidence Code relating to privilege.

SEC. 12. Section 129.5 of the Labor Code is amended to read:

129.5. (a) The Office of Benefit Assistance and Enforcement shall assess an administrative penalty against an insurer, self-insured employer, or third-party administrator for any of the following:

(1) Failure to comply with the notice of assessment issued pursuant to subdivision (c) of Section 129 within 15 days of receipt.

(2) Failure to pay when due the undisputed portion of an indemnity payment, the reasonable cost of medical treatment of an injured worker, or a charge or cost of implementing an approved vocational rehabilitation plan.

(3) Failure to comply with any rule or regulation of the administrative director.

(b) The administrative director shall promulgate regulations establishing a schedule of violations and the amount of the administrative penalty to be imposed for each type of violation. The schedule shall provide for imposition of a penalty of up to one hundred dollars ($100) for each violation of the least serious type and for imposition of penalties in progressively higher amounts for more serious types of violations, with the penalty for the most serious types of violations to be set at up to five thousand dollars ($5,000) per violation. The administrative director is authorized to impose penalties pursuant to rules and regulations which give due consideration to the appropriateness of the penalty with respect to the following factors:

(1) The gravity of the violation.

(2) The good faith of the insurer, self-insured employer, or third-party administrator.

(3) The history of previous violations, if any.

(4) The frequency of the violations.

(c) The notice of penalty assessment shall be served personally or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. The notice shall be in writing and shall describe the nature of the violation, including reference to the statutory provision or rule or regulation alleged to have been violated. The notice shall become final and the assessment shall be paid unless contested within 15 days of receipt by the insurer, self-insured employer, or third-party administrator.

(d) In addition to the penalty assessment permitted by subdivision (a), the administrative director may assess a civil penalty, not to exceed one hundred thousand dollars ($100,000), upon finding, after hearing, that an employer, insurer, or third-party administrator for an employer has knowingly committed and has performed with a frequency as to indicate a general business practice any of the following:

(1) Induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation due.

(2) Refused to comply with known and legally indisputable compensation obligations.

(3) Discharged or administered compensation obligations in a dishonest manner.

(4) Discharged or administered compensation obligations in a manner as to cause injury to the public or those dealing with the employer or insurer.

Upon a second or subsequent finding, the administrative director shall refer the matter to the Insurance Commissioner or Director of Industrial Relations and request that a hearing be conducted to determine whether the certificate of authority, certificate of consent to self-insure, or certificate of consent to administer claims of self-insured employer, as the case may be, should be revoked.

(e) An insurer, self-insured employer, or third-party administrator may file a written request for a conference with the administrative director within seven days after receipt of the notice of penalty assessment issued pursuant to subdivision (a) or (d). Within 15 days of the conference, the administrative director shall issue a notice of findings and serve it upon the contesting party by registered or certified mail. Any amount found due by the administrative director shall become due and payable 30 days after receipt of the notice of findings. The 30-day period shall be tolled during any appeal. A writ of mandate may be taken from the findings to the appropriate superior court upon the execution by the contesting party of a bond to the state in the principal sum that is double the amount found due and ordered by the administrative director, on the condition that the contesting party shall pay any judgment and costs rendered against it for the amount.

(f) Nothing in this section shall create nor eliminate a civil cause of action for the employee and his or her dependents.

(g) All moneys collected under this section shall be deposited in the State Treasury and credited to the Workplace Health and Safety Revolving Fund.

SEC. 13. Section 132a of the Labor Code is amended to read:

132a. It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.

(1) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she

has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one-half, but in no event more than ten thousand dollars ($10,000), together with costs and expenses not in excess of two hundred fifty dollars ($250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(2) Any insurer that advises, directs, or threatens an insured under penalty of cancellation or a raise in premium or for any other reason, to discharge an employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and subject to the increased compensation and costs provided in paragraph (1).

(3) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee testified or made known his or her intentions to testify in another employee's case before the appeals board, is guilty of a misdemeanor, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(4) Any insurer that advises, directs, or threatens an insured employer under penalty of cancellation or a raise in premium or for any other reason, to discharge or in any manner discriminate against an employee because the employee testified or made known his or her intention to testify in another employee's case before the appeals board, is guilty of a misdemeanor.

Proceedings for increased compensation as provided in paragraph (1), or for reinstatement and reimbursement for lost wages and work benefits, are to be instituted by filing an appropriate petition with the appeals board, but these proceedings may not be commenced more than one year from the discriminatory act or date of termination of the employee. The appeals board is vested with full power, authority, and jurisdiction to try and determine finally all matters specified in this section subject only to judicial review, except that the appeals board shall have no jurisdiction to try and determine a misdemeanor charge. The appeals board may refer and any worker may complain of suspected violations of the criminal misdemeanor provisions of this section to the Division of Labor Standards Enforcement, or directly to the office of the public prosecutor.

SEC. 14. Section 139 of the Labor Code is amended to read:

139. (a) The Industrial Medical Council shall consist of nine doctors of medicine, at least one of whom shall be a psychiatrist and at least one of whom shall specialize in occupational medicine, two doctors of osteopathy, two doctors of chiropractic, and one doctor of

psychology, all of whom shall be licensed to practice in this state. The administrative director shall be an ex officio, nonvoting member of the council, and the medical director appointed pursuant to Section 122, shall serve as executive secretary of the council.

(b) The Governor shall appoint four doctors of medicine, two doctors of osteopathy, and one doctor of chiropractic to the council. The Senate Committee on Rules shall appoint two doctors of medicine, one of whom shall be a psychiatrist, and the doctor of chiropractic. The Speaker of the Assembly shall appoint two doctors of medicine, one of whom shall be an occupational medicine specialist, and the doctor of psychology. The Speaker of the Assembly and the Senate Committee on Rules, alternately, shall appoint the remaining doctor of medicine. The Speaker of the Assembly shall make the initial appointment of this member.

The term of office of members of the council shall be four years, and a member shall hold office until the appointment of a successor. However, the initial terms of three of the doctors of medicine appointed by the Governor shall expire, respectively, on December 31, 1991, December 31, 1992, and December 31, 1993, and the initial terms of the doctors of medicine appointed by the Speaker of the Assembly shall expire, respectively, on December 31, 1991, December 31, 1992, and December 31, 1993. The initial term of one doctor of osteopathy and the doctor of psychology shall both expire on December 31, 1991. Any vacancy shall be filled by the original appointing authority for the unexpired term.

(c) The nine doctors of medicine and the doctors of osteopathy of the council shall represent medical specialities concerned with the treatment of industrial injury and disease. The doctors of medicine shall be appointed after consultation with the statewide and local associations of the medical profession. The doctors of osteopathy and psychology shall be appointed after consultation with the statewide associations of the osteopathic medical profession and psychologists. The doctors of chiropractic shall be appointed after consultation with statewide and local associations of the chiropractic profession.

(d) Any physician of a type which must be represented pursuant to subdivision (a) may be considered for appointment to the council if the following qualifications are met:

(1) A physician and surgeon shall be board certified in his or her specialty or, if a doctor of chiropractic, shall be certified in a chiropractic specialty recognized and approved by the California Chiropractic Association, the International Chiropractors Association of California, or the American Chiropractic Association, or if a psychologist, shall be board certified in clinical psychology, or hold a doctoral degree in psychology from an accredited university or professional school and have not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(2) The physician shall be experienced in treating and evaluating industrial injuries and shall maintain an active practice, of which at

least 20 percent of the total practice time is devoted to direct patient treatment.

(e) Members of the council shall, within the scope of each member's professional training, do all of the following:

(1) Maintain liaisons with the medical, osteopathic, chiropractic, and psychological professions.

(2) Counsel and assist the administrative director and perform other duties as the administrative director may request.

(3) Assist in recruiting physicians for the medical bureau of the division.

(4) Assist in developing guidelines for the determination of disputed questions of clinical fact.

(5) Suggest standards for improving care furnished to injured employees.

(6) Undertake continuing studies of developments in the field of rehabilitation, and continuously inform treating physicians of these developments.

(7) Recommend reasonable levels of fees for physicians performing services under Division 4 (commencing with Section 3200).

(8) In coordination with the administrative director, monitor and measure changes in the cost and frequency of the most common medical services.

(f) The council shall appoint an advisory committee on psychiatric injuries with both psychologists and psychiatrists as members and shall consider the advisory committee's recommendations concerning psychiatric injuries. The council may appoint advisory committees for other specialties as may be necessary to the performance of its duties.

(g) No action of the council shall be taken unless concurred in by not less than eight members present and voting at a meeting.

(h) Members of the council shall receive actual, necessary traveling expenses and a per diem allowance of one hundred dollars ($100) for each day spent in meetings of the council.

SEC. 15. Section 139.1 is added to the Labor Code, to read:

139.1. (a) The Industrial Medical Council shall advise the medical director as to the selection and removal of independent medical and chiropractic examiners. The administrative director shall appoint independent medical and chiropractic examiners in each of the respective specialties as may be required.

(b) Assignment of cases to independent examiners shall be made by the medical director at the request of the administrative director, the secretary of the appeals board, or a workers' compensation judge upon the agreement of a party to pay the cost, and with the consent of the injured employee and his or her representative, if any. Insofar as possible, a rotation method shall be followed in assignment of independent examiners.

(c) Independent examiners shall conduct examinations and report their findings and opinions in accordance with guidelines

developed for that purpose by the medical director.

(d) This section shall apply only to injuries occurring before January 1, 1991.

SEC. 16. Section 139.2 of the Labor Code is amended to read:

139.2. (a) The Industrial Medical Council shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical issues. The appointments shall be for four-year terms.

(b) The council shall appoint as qualified medical evaluators every physician, as defined in Section 3209.3, who is licensed to practice in this state and who meets both of the following requirements:

(1) Devotes at least 20 percent of total practice time to providing medical treatment, or has served as an agreed medical evaluator on eight or more occasions in the 12 months prior to applying to be a qualified medical evaluator.

(2) Meets one of the following requirements:

(A) Is board certified, or qualified for board certification, within a time period specified by the council, in his or her specialty by an appropriate board recognized by the council or, if a chiropractor, is certified in disability evaluation by an appropriate California professional chiropractic association or accredited California college recognized by the council, or, if a psychologist, meets one of the following requirements:

(i) Is board certified in clinical psychology by a board recognized by the council.

(ii) Holds a doctoral degree in psychology from a university or professional school recognized by the council and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(iii) Has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders, and has served as an agreed medical evaluator on eight or more occasions prior to January 1, 1990.

(B) Served as an agreed medical evaluator on eight or more occasions prior to January 1, 1970.

(c) The council shall promulgate standards for appointment of physicians who are retired or who hold teaching positions who are exceptionally well qualified to serve as a qualified medical evaluator even though they do not otherwise qualify under paragraph (1) of subdivision (b). In no event shall a physician whose full-time practice is limited to the forensic evaluation of disability be appointed as a qualified medical evaluator under this subdivision.

(d) The evaluator, upon request, shall be reappointed if he or she meets the qualifications for appointment and meets all of the following criteria:

(1) Has completed formal medical evaluations within a reasonable time after assignment.

(2) Has not had more than 30 percent of his or her evaluations of

unrepresented employees which were considered by a workers' compensation judge at a contested hearing rejected by the judge during the most recent four-year period during which the physician served as a qualified medical evaluator. If the judge does not rely on the qualified medical evaluator, the judge shall make a specific finding to that effect, and shall give notice to the evaluator.

(3) Has completed within the previous 24 months at least eight hours of continuing education in disability evaluation approved by the Industrial Medical Council.

(4) Has not been terminated under subdivision (e) or terminated or suspended under subdivision (k) during his or her most recent term as a qualified medical evaluator.

If the evaluator does not meet any of these criteria, the Industrial Medical Council may in its discretion reappoint or deny reappointment according to regulations promulgated by the council. In no event may a physician who has been terminated under subdivision (e) be reappointed.

(e) Except as provided in subdivision (k), the evaluator shall not be terminated during his or her term of office unless his or her licensing authority has suspended, revoked, or terminated his or her license to practice in California.

(f) The Industrial Medical Council shall furnish a physician, upon request, a written statement of its reasons for termination of or for denying appointment or reappointment as a qualified medical evaluator. Upon receipt of a specific response to the statement of reasons, the Industrial Medical Council shall review its decision not to appoint or reappoint the physician or to terminate the physician and shall notify the physician of its final decision within 60 days after receipt of the physician's response.

(g) The council shall establish agreements with qualified medical evaluators to assure the expeditious evaluation of cases assigned to them for formal medical evaluations.

(h) The medical director appointed pursuant to Section 122, shall assign three-member panels of qualified medical evaluators within five working days after receiving a request for a panel pursuant to Section 4061. If a panel is not assigned within 15 working days, the employee shall have the right to obtain a formal medical evaluation from any qualified medical evaluator of his or her choice. The medical director shall use a random selection method for assigning panels of qualified medical evaluators. The medical director shall select evaluators who are specialists of the type selected by the employee. The medical director shall advise the employee that he or she should consult with his or her treating physician prior to deciding which type of specialist to request. The Industrial Medical Council shall promulgate a form which shall notify the employee of the physicians selected for his or her panel. The form shall include, for each physician on the panel, the physician's name, address, telephone number, specialty, number of years in practice, and a brief description of his or her education and training, and shall advise the

employee that he or she is entitled to receive transportation expenses and temporary disability for each day necessary for the examination. The form shall also state in a clear and conspicuous location and type: "You have the right to consult with an attorney prior to selecting the doctor to prepare your evaluation. If your claim eventually goes to court, the judge will consider the evaluation prepared by the doctor you select to decide your claim." When compiling the list of evaluators from which to select randomly, the medical director shall include all qualified medical evaluators of the appropriate specialty type as recognized by an appropriate, recognized board within the general geographic area of the employee's residence, and shall have no authority to exclude qualified medical evaluators based on any other criteria. When the medical director determines that an employee has requested an evaluation by a type of specialist which is appropriate for the employee's injury, but there are not enough qualified medical evaluators of that type within the general geographic area of the employee's residence to establish a three-member panel, the medical director shall include sufficient qualified medical evaluators from other geographic areas and the employer shall pay all necessary travel costs incurred in the event the employee selects an evaluator from another geographic area.

(i) The medical director appointed pursuant to Section 122, shall continuously review the quality of formal medical evaluations and reports prepared by agreed and qualified medical evaluators and the timeliness with which evaluation reports are prepared and submitted. The review shall include, but not be limited to, a review of a random sample of reports submitted to the division, and a review of all reports alleged to be inaccurate or incomplete by a party to a case for which the evaluation was prepared. The medical director shall submit to the administrative director an annual report summarizing the results of the continuous review of medical evaluations and reports prepared by agreed and qualified medical evaluators and make recommendations for the improvement of the system of medical evaluations and determinations.

(j) After public hearing pursuant to Section 5307.4, the council shall promulgate rules and regulations concerning the following medical issues:

(1) Standards governing the time frames within which formal medical evaluations shall be prepared and submitted by agreed and qualified medical evaluators. The time frame for initial formal medical evaluations to be prepared and submitted shall be no more than 45 days after the evaluator has seen the employee or otherwise commenced the formal medical evaluation procedure. The council shall develop a written policy governing the provision of extensions of the 45-day period in cases where the evaluator has not received test results or consulting physician's evaluations in time to meet the 45-day deadline. The council shall develop timeframes governing availability of qualified medical evaluators for unrepresented

employees under Section 4061. These timeframes shall give the employee the right to the addition of a new evaluator to his or her panel, selected at random, for each evaluator not available to see the employee within a specified period of time, but shall also permit the employee to waive this right for a specified period of time thereafter.

(2) Procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury. In order to produce complete, accurate, uniform, and replicable evaluations, the procedures shall require that an evaluation of anatomic loss, functional loss, and the presence of physical complaints be supported, to the extent feasible, by medical findings based on standardized examinations and testing techniques generally accepted by the medical community.

(3) Procedures governing the determination of disputed medical issues specified in Sections 4061 and 4062.

(4) Procedures to be used in determining the compensability of psychiatric injury. The procedures shall be in accordance with Section 3208.3 and shall require that the diagnosis of a mental disorder be expressed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(k) The Industrial Medical Council may, in its discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the council, after hearing pursuant to subdivision (*l*), determines that a qualified medical evaluator:

(1) Has violated Section 139.3 or Section 4628.

(2) Has failed to follow the medical procedures established by the council pursuant to paragraph (2), (3), or (4) of subdivision (j) in 10 or more formal medical evaluations during a 12-month period.

(3) Has failed to comply with the timeframe standards established by the council pursuant to subdivision (j) on 10 or more occasions during a 12-month period.

(4) Has failed to meet the requirements of subdivision (b) or (c).

(*l*) The council shall cite the qualified medical evaluator for a violation listed in subdivision (k) and shall set a hearing on the alleged violation within 30 days of service of the citation on the qualified medical evaluator. In addition to the authority to terminate or suspend the qualified medical evaluator upon finding a violation listed in subdivision (k), the council may, in its discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training.

SEC. 17. Section 139.3 of the Labor Code is amended to read:

139.3. (a) Neither an agreed nor a qualified medical evaluator, nor a physician who consults with an agreed or qualified medical evaluator, shall offer, deliver, receive, or accept any rebate, refund, commission, preference, patronage dividend, discount, or other

consideration, whether in the form of money or otherwise, as compensation or inducement for the referred evaluation or consultation.

(b) It shall not be unlawful for an agreed or qualified medical evaluator to refer a person to any laboratory, pharmacy, clinic, or health care facility solely because the agreed or qualified medical evaluator has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility, but the referral shall be prohibited if there was no valid medical need for the referral.

(c) An agreed or qualified medical evaluator who refers to or seeks consultation from an organization in which the agreed or qualified medical evaluator has a significant beneficial interest shall disclose this interest to the parties in writing at the time of the referral and in the final medical evaluation. For the purposes of this section, the term "significant beneficial interest" shall have the same meaning as set forth in Section 654.2 of the Business and Professions Code.

(d) A qualified medical evaluator who is found to have committed a violation of this section may be terminated, suspended, or placed on probation as a qualified medical evaluator by the Industrial Medical Council.

SEC. 18. Section 139.5 of the Labor Code is amended to read:

139.5. (a) The administrative director shall establish within the Office of Benefit Determination a vocational rehabilitation unit, which shall include appropriate professional staff, and which shall have the following duties:

(1) To foster, review, and approve vocational rehabilitation plans developed by a qualified rehabilitation representative of the employer, insurer, state agency, or employee.

(2) To develop rules and regulations, to be promulgated by the administrative director, which would expedite and facilitate the identification, notification and referral of industrially injured employees to vocational rehabilitation services.

(3) To coordinate and enforce the implementation of vocational rehabilitation plans.

(4) To develop a fee schedule, to be promulgated by the administrative director, governing reasonable fees for vocational rehabilitation services provided on and after January 1, 1991. The initial fee schedule promulgated under this paragraph shall be designed to reduce the cost of vocational rehabilitation services by 10 percent from the level of fees paid during 1989.

(5) To develop standards, to be promulgated by the administrative director, for governing the timeliness and the quality of vocational rehabilitation services.

(b) The salaries of the personnel of the vocational rehabilitation unit shall be fixed by the Department of Personnel Administration.

(c) When an employee is determined to be medically eligible and chooses to enroll in a vocational rehabilitation program, he or she shall continue to receive temporary disability indemnity payments,

and, after his or her medical condition becomes permanent and stationary, a maintenance allowance. The employee also shall receive additional living expenses necessitated by the vocational rehabilitation services, together with all reasonable and necessary vocational training, at the expense of the employer.

(d) The amount of the maintenance allowance due under subdivision (c) shall be two-thirds of the employee's average weekly earnings at the date of injury payable as follows:

(1) The amount the employee would have received as continuing temporary disability indemnity, but not more than two hundred forty-six dollars ($246) a week for injuries occurring on or after January 1, 1990.

(2) At the employee's option, an additional amount from permanent disability indemnity due or payable, sufficient to provide the employee with a maintenance allowance equal to two-thirds of the employee's average weekly earnings at the date of injury subject to the limits specified in subdivision (a) of Section 4453 and the requirements of Section 4661.5. In no event shall temporary disability indemnity and a maintenance allowance be payable concurrently.

If the employer disputes the treating physician's determination of medical eligibility, the employee shall continue to receive that portion of the maintenance allowance payable under paragraph (1) pending final determination of the dispute. If the employee disputes the treating physician's determination of medical eligibility and prevails, the employee shall be entitled to that portion of the maintenance allowance payable under paragraph (1) retroactive to the date of the employee's request for vocational rehabilitation services.

(e) No provision of this section nor of any rule, regulation, or vocational rehabilitation plan developed or promulgated under this section nor any benefit provided pursuant to this section shall apply to an injured employee whose injury occurred prior to January 1, 1975. Nothing in this section shall affect any plan, benefit, or program authorized by this section as added by Chapter 1513 of the Statutes of 1965 or as amended by Chapter 83 of the Statutes of 1972.

(f) The time within which an employee may request vocational rehabilitation services is set forth in Sections 5405.5, 5410, and 5803.

SEC. 19. Section 139.6 of the Labor Code is amended to read:

139.6. (a) The administrative director shall establish and effect within the Division of Workers' Compensation a continuing program to provide information and assistance concerning the rights, benefits, and obligations of the workers' compensation law to employees and employers subject thereto. The program shall include, but not be limited to, the following:

(1) The preparation, publishing, and as necessary, updating, of guides to the California workers' compensation system for employees and employers. The guides shall detail, in easily understandable language, the rights and obligations of employees and employers, the procedures for obtaining benefits, and the means

provided for resolving disputes. Separate guides may be prepared for employees and employers. The appropriate guide shall be provided to all labor and employer organizations known to the administrative director, and to any other person upon request.

(2) The preparation, publishing, and as necessary, updating, of a pamphlet advising injured workers of their basic rights under workers' compensation law in easily understandable language. The pamphlet shall be available in both English and Spanish, and shall include basic information concerning the circumstances under which injured employees are entitled to the various types of workers' compensation benefits, the protections against discrimination because of an injury, the procedures for resolving any disputes which arise, and the right to seek information and advice from an information and assistance officer or an attorney.

(b) In each district office of the division, the administrative director shall appoint an information and assistance officer, and any other deputy information and assistance officers as the work of the district office may require. The administrative director shall provide office facilities and clerical support appropriate to the functions of these information and assistance officers.

(c) Each information and assistance officer shall be responsible for the performance of the following duties:

(1) Providing continuing information concerning rights, benefits, and obligations under workers' compensation laws to injured workers, employers, lien claimants, and other interested parties.

(2) Upon request by the injured worker, assisting in the prompt resolution of misunderstanding, disputes, and controversies arising out of claims for compensation, without formal proceedings, in order that full and timely compensation benefits shall be furnished. In performing this duty, information and assistance officers shall not be responsible for reviewing applications for adjudication or declarations of readiness to proceed. This function shall be performed by workers' compensation judges. This function may also be performed by settlement conference referees upon delegation by the appeals board.

(3) Distributing any information pamphlets in English and Spanish as are prepared and approved by the administrative director to all inquiring injured workers and any other parties that may request copies of these pamphlets.

(4) Establishing and maintaining liaison with the persons located in the geographic area served by the district office, with other affected state agencies, and with organizations representing employees, employers, insurers, and the medical community.

SEC. 20. Section 3208.3 of the Labor Code is amended to read:

3208.3. (a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology

and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(b) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were responsible for at least 10 percent of the total causation from all sources contributing to the psychiatric injury.

(c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.

SEC. 21. Section 4061 of the Labor Code is amended to read:

4061. (a) Together with the last payment of temporary disability indemnity, the employer shall, in a form prescribed by the administrative director pursuant to Section 138.4, provide the employee one of the following:

(1) Notice that no permanent disability indemnity will be paid because the employer alleges the employee has no permanent impairment or limitations resulting from the injury. The notice shall include information concerning how the employee may obtain a formal medical evaluation pursuant to subdivision (c) if he or she disagrees with the position taken by the employer.

(2) Notice that permanent disability indemnity may be or is payable, but that the amount cannot be determined because the employee's medical condition is not yet permanent and stationary. The notice shall advise the employee that his or her medical condition will be monitored until it is permanent and stationary, at which time the necessary evaluation will be performed to determine the existence and extent of permanent impairment and limitations for the purpose of rating permanent disability and to determine the need for continuing medical care. If an employee is provided notice pursuant to this paragraph and the employer later takes the position that the employee has no permanent impairment or limitations resulting from the injury, the employer shall, within 14 days of the determination to take this position, provide the employee with the notice specified in paragraph (1).

(3) Notice that permanent disability indemnity may be or is payable and that the employer has received information indicating that the employee's condition is now permanent and stationary.

(b) Each notice required by subdivision (a) shall describe the administrative procedures available to the injured employee and advise the employee of his or her right to consult an attorney.

(c) If the employee requests a formal medical evaluation after the employer notifies the employee that no permanent disability indemnity will be paid pursuant to paragraph (1) of subdivision (a), and the employee is represented by an attorney, the employer shall seek agreement with the employee on a physician, who need not be

a qualified medical evaluator, to prepare a formal medical evaluation of the employee's permanent impairment and limitations and any need for continuing medical care resulting from the injury. If no agreement is reached within 10 days, or any additional time not to exceed 20 days agreed to by the parties, the parties may not later select an agreed medical evaluator. Evaluations obtained prior to the period to reach agreement shall not be admissible in any proceeding before a workers' compensation judge or the appeals board. After the period to reach agreement has expired, each party may select a qualified medical evaluator to conduct the formal medical evaluation. Neither party may obtain reports from more than one qualified medical evaluator for each appropriate medical specialty or subspecialty. Each report shall be reasonable and necessary for a complete evaluation. The limitation to reports of one qualified medical evaluator for each appropriate medical specialty or subspecialty shall not apply to the following:

(1) Reports by treating physicians.

(2) Where the appeals board determines there is good cause to permit a party to obtain an evaluation from another physician.

If the employee is not represented by an attorney, the employer shall not seek agreement with the employee on a physician to prepare the formal medical evaluation. The employer shall immediately provide the employee with a form prescribed by the medical director with which to request assignment of a panel of three qualified medical evaluators. The employee shall select a physician from the panel to prepare a formal medical evaluation of the employee's permanent impairment and limitations and any need for continuing medical care resulting from the injury.

(d) When the employer has reason to believe that the employee has or may have permanent impairment or limitations, the employer shall, within five working days after receipt of information indicating the employee's medical condition is permanent and stationary, serve on the employee an explanation and description, as prescribed by the administrative director under Section 138.4, of the procedures for evaluation of permanent impairment and limitations and any need for continuing medical care resulting from the injury. If the employee is represented by an attorney, the employee and employer shall seek agreement on a physician, who need not be a qualified medical evaluator, to evaluate the existence and extent of permanent impairment and limitations and any need for continuing medical care resulting from the injury. If no agreement is reached within 10 days, or any additional time not to exceed 20 days agreed upon by the parties, the parties may not later select an agreed medical evaluator. Evaluations obtained prior to the period to reach agreement shall not be admissible in any proceeding before a workers' compensation judge or the appeals board. After the period to reach agreement has expired, each party may select a qualified medical evaluator to conduct the formal medical evaluation. Neither party may obtain reports from more than one qualified medical

evaluator for each appropriate medical speciality or subspeciality. Each report shall be reasonable and necessary for a complete evaluation. The limitation to reports of one qualified medical evaluator for each appropriate medical specialty or subspecialty shall not apply to the following:

(1) Reports by treating physicians.

(2) Where the appeals board determines there is good cause to permit a party to obtain an evaluation from another physician.

If the employee is not represented by an attorney, the employer shall not seek agreement with the employee on a physician to prepare the formal medical evaluation. The employer shall immediately request the medical director, on a form prescribed for that purpose, to assign a panel of three qualified medical evaluators. The employee shall select a physician from the panel to prepare a formal medical evaluation of permanent impairment and limitations and any need for continuing medical care resulting from the injury.

(e) The employee shall be responsible for making an appointment with an agreed medical examiner or a qualified medical evaluator selected from a panel of three qualified medical evaluators. The evaluator shall give the employee, at the appointment, a brief opportunity to ask questions concerning the evaluation process and the evaluator's background. The unrepresented employee shall then participate in the evaluation as requested by the evaluator unless the employee has good cause to discontinue the evaluation. For purposes of this subdivision, "good cause" shall include evidence that the evaluator is biased against the employee because of his or her race, sex, national origin, religion, or sexual preference or evidence that the evaluator has requested the employee to submit to an unnecessary medical examination or procedure. If the unrepresented employee terminates the evaluation, he or she shall have the right to a new panel of three qualified medical evaluators from which to select one to prepare a formal medical evaluation. If the appeals board subsequently determines that the employee did not have good cause to terminate the evaluation, the cost of the evaluation shall be deducted from any award the employee obtains.

(f) Upon selection or assignment pursuant to subdivision (c) or (d), the medical evaluator shall perform a formal medical evaluation according to the procedures promulgated by the Industrial Medical Council under paragraphs (2) and (3) of subdivision (j) of Section 139.2 and summarize the medical findings on a form prescribed by the Industrial Medical Council.

(g) The agreed or qualified medical evaluator shall consult with a physician in an appropriate specialty who is a qualified medical evaluator or who is eligible for appointment as a qualified medical evaluator when reasonably necessary to produce a formal medical evaluation which meets the standards promulgated by the Industrial Medical Council. The agreed or qualified medical evaluator may also consult with a physician who is not a qualified medical evaluator,

regardless of whether or not the physician is licensed to practice in California, only if the physician possesses necessary expertise in a specialty which does not normally treat and without which a complete and accurate formal medical evaluation cannot be obtained. If the unrepresented employee or the employer believes that the evaluator has not consulted with a physician or physicians whose expertise is necessary to provide a complete and accurate evaluation, the unrepresented employee or the employer may request that the medical director direct the evaluator to consult with a physician in an appropriate specialty to address issues outside the expertise of the evaluator. This request shall be in writing, shall specify the reasons for the request, and shall be served on the other party. The medical director shall grant the employer's or unrepresented employee's request if the consultation requested is necessary to provide a complete and accurate evaluation. The Industrial Medical Council shall adopt a regulation determining how long the medical director shall have to grant or deny these requests.

(h) The agreed or qualified medical evaluator shall serve the formal medical evaluation and the summary form on the employee, employer, and the Office of Benefit Determination. Within 20 days of receipt of the formal medical evaluation, the Office of Benefit Determination shall calculate the permanent disability rating according to Section 4660 and serve the rating on the employee and employer.

(i) Any formal medical evaluation concerning an unrepresented employee which indicates that part or all of an employee's permanent impairment or limitations may be subject to apportionment pursuant to Sections 4663 or 4750 shall first be submitted by the Office of Benefit Determination to a workers' compensation judge who may refer the report back to the qualified medical evaluator for correction or clarification if the judge determines the proposed apportionment is inconsistent with the law.

(j) Within 30 days of receipt of the rating, if the employee is unrepresented, the employee or employer may request that the Office of Benefit Determination reconsider the recommended rating or obtain additional evaluations from a qualified medical evaluator to address issues not addressed or not completely addressed in the original formal medical evaluation or not prepared in accord with the procedures of the Industrial Medical Council promulgated under paragraph (2) or (3) of subdivision (j) of Section 139.2. This request shall be in writing, shall specify the reasons the rating should be reconsidered, and shall be served on the other party. If the administrative director finds the formal medical evaluation is not complete or not in compliance with the required procedures, the administrative director shall return the report to the qualified medical evaluator for appropriate action as the administrative director instructs. Upon receipt of the qualified medical evaluator's final formal medical evaluation and summary form, the Office of Benefit Determination shall recalculate the permanent disability

rating according to Section 4660 and serve the rating, the formal medical evaluation, and the summary form on the employee and employer.

(k) If a formal medical evaluation from an agreed medical evaluator or a qualified medical evaluator selected from a three-member panel resolves any issue so as to require an employer to provide compensation, the employer shall commence the payment of compensation or file an application for adjudication of claim. If the employee and employer agree to a stipulated findings and award as provided under Section 5702 or to compromise and release the claim under Chapter 2 (commencing with Section 5000) of Part 3, or if the employee wishes to commute the award under Chapter 3 (commencing with Section 5100) of Part 3, the appeals board shall first determine whether the agreement or commutation is in the best interests of the employee and whether the proper procedures have been followed in determining the permanent disability rating. The Office of Benefit Determination shall promulgate a form to notify the employee, at the time of service of any rating under this section, of the options specified in this subdivision, the potential advantages and disadvantages of each option, and the procedure for disputing the rating.

(*l*) No issue relating to the existence or extent of permanent impairment and limitations or the need for continuing medical care resulting from the injury may be the subject of an application for adjudication of claim unless there has first been a medical evaluation by an agreed or qualified medical evaluator. With the exception of an evaluation or evaluations prepared by the treating physician or physicians, no evaluation of permanent impairment and limitations or need for continuing medical care resulting from the injury shall be obtained prior to service of the formal medical evaluation on the employee and employer if the employee is unrepresented, or prior to the attempt to select an agreed medical evaluator if the employee is represented. Evaluations obtained in violation of this prohibition shall not be admissible in any proceeding before the appeals board. However, the testimony, records, and reports offered by the treating physician or physicians who treated the employee for the injury and formal medical evaluations prepared by a qualified medical evaluator selected by an unrepresented employee from a three-member panel shall be admissible.

SEC. 22. Section 4062 of the Labor Code is amended to read:

4062. (a) This section shall apply only to employees who are represented by an attorney.

(b) If either the employee or employer objects to a medical determination made by the treating physician concerning the permanent and stationary status of the employee's medical condition, the employee's preclusion or likely preclusion to engage in his or her usual occupation, the extent and scope of medical treatment, or the existence of new and further disability, the objecting party shall notify the other party in writing of the

objection. Parties shall seek agreement with the other party on a physician, who need not be a qualified medical evaluator, to prepare a report resolving the disputed issue. If no agreement is reached within 10 days, or any additional time not to exceed 20 days agreed upon by the parties, the parties may not later select an agreed medical evaluator. Evaluations obtained prior to the period to reach agreement shall not be admissible in any proceeding before the appeals board. After the period to reach agreement has expired, each party may select a qualified medical evaluator to conduct the formal medical evaluation. Neither party may obtain reports from more than one qualified medical evaluator for each appropriate medical specialty or subspecialty. Each report shall be reasonable and necessary for a complete evaluation. The limitation to reports of one qualified medical evaluator for each appropriate medical specialty or subspecialty shall not apply to the following:

(1) Reports by treating physicians.

(2) Where the appeals board determines there is good cause to permit a party to obtain an evaluation from another physician.

(c) The agreed or qualified medical evaluator shall consult with a physician in an appropriate specialty who is a qualified medical evaluator or who is eligible for appointment as a qualified medical evaluator when reasonably necessary to produce a formal medical evaluation which meets the standards promulgated by the Industrial Medical Council. The agreed or qualified medical evaluator may also consult with a physician who is not a qualified medical evaluator, regardless of whether or not the physician is licensed to practice in California, only if the physician possesses necessary expertise in a specialty which does not normally treat and without which a complete and accurate formal medical evaluation cannot be obtained.

(d) Upon completing a determination of the disputed medical issue, the physician selected under subdivision (b) to perform the medical evaluation shall summarize the medical findings on a form prescribed by the Industrial Medical Council and shall serve the formal medical evaluation and the summary form on the employee, employer, and administrative director.

(e) No disputed medical issue specified in subdivision (b) may be the subject of an application for adjudication of claim unless there has first been an evaluation by an agreed or qualified medical evaluator.

(f) With the exception of a report or reports prepared by the treating physician or physicians, no report determining disputed medical issues set forth in subdivision (b) shall be obtained prior to the expiration of the period to reach agreement on the selection of an agreed medical evaluator under subdivision (b). Reports obtained in violation of this prohibition shall not be admissible in any proceeding before the appeals board. However, the testimony, records, and reports offered by the treating physician or physicians who treated the employee for the injury shall be admissible.

SEC. 23. Section 4062.2 of the Labor Code is amended to read:

4062.2. (a) As part of their agreement on an evaluator, the parties shall agree what information is to be provided to the agreed medical evaluator.

(b) Any party may provide to the qualified medical evaluator selected by an unrepresented worker from a three-member panel any of the following information:

(1) Records prepared or maintained by the employee's treating physician or physicians.

(2) Medical and nonmedical records relevant to determination of the medical issue.

(c) Information which a party proposes to provide to the qualified medical evaluator selected by an unrepresented worker from a three-member panel shall be served on the opposing party 20 days before the information is provided to the evaluator. If the opposing party objects to consideration of nonmedical records within 10 days thereafter, the records shall not be provided to the evaluator. Either party may use discovery to establish the accuracy or authenticity of nonmedical records prior to the evaluation.

(d) In any formal medical evaluation, the agreed or qualified medical evaluator shall identify the following:

(1) All information received from the parties.

(2) All information reviewed in preparation of the report.

(3) All information relied upon in the formulation of his or her opinion.

(e) All communications with an agreed medical evaluator or a qualified medical evaluator selected by an unrepresented worker from a three-member panel before a formal medical evaluation shall be in writing and shall be served on the opposing party 20 days in advance of the evaluation. Any subsequent communication with the medical evaluator shall be in writing and shall be served on the opposing party when sent to the medical evaluator.

(f) Ex parte communication with an agreed medical evaluator or a qualified medical evaluator selected by an unrepresented worker from a three-member panel is prohibited. If a party communicates with the agreed medical evaluator or the qualified medical evaluator selected by an unrepresented worker from a three-member panel in violation of subdivision (d), the aggrieved party may elect to terminate the formal medical evaluation and seek a new evaluation from another qualified medical evaluator, or proceed with the initial evaluation.

(g) The party making the communication prohibited by this section shall be subject to being charged with contempt before the appeals board and shall be liable for the costs incurred by the aggrieved party as a result of the prohibited communication, including the cost of the formal medical evaluation, additional discovery costs, and attorney's fees for related discovery.

(h) This section shall not apply to oral communications by the employee or, if the employee is deceased, the employee's dependent, or to forms and documents requested by the evaluator

or provided by the evaluator to the employee or, if the employee is deceased, the employee's dependent, pursuant to the examination.

SEC. 24. Section 4062.5 of the Labor Code is amended to read:

4062.5. If a qualified medical evaluator selected by an unrepresented employee from a three-member panel fails to complete the formal medical evaluation within the time-frames established by the Industrial Medical Council pursuant to paragraph (1) of subdivision (j) of Section 139.2, the employee shall have the right to a new panel of three qualified medical evaluators from which to select one to prepare a formal medical evaluation. Neither the employee nor the employer shall have any liability for payment for the formal medical evaluation which was not completed within the required timeframes unless the employee, on a form prescribed by the Industrial Medical Council, waives his or her right to a new evaluation and elects to accept the original evaluation even though it was not completed within the required timeframes.

SEC. 25. Section 4064 of the Labor Code is amended to read:

4064. (a) The employer shall pay the cost of medical evaluations reasonably, actually, and necessarily incurred, pursuant to subdivisions (c) and (d) of Section 4061 or subdivision (b) of Section 4062. The employer also shall pay the cost of rebuttal reports reasonably, actually, and necessarily incurred by an unrepresented employee to rebut the findings of the qualified medical evaluator selected from a three-member panel, provided, however, that the employee may not obtain rebuttal reports from more than one qualified medical evaluator for each appropriate medical specialty or subspecialty.

(b) The employer shall also pay the cost of consultations with other physicians in other specialties requested by the evaluators in connection with the evaluations and reports in subdivision (a).

(c) If an unrepresented employee obtains an attorney after the evaluation in subdivision (a) (2) has been completed, the employee shall be entitled to the same reports at employer expense as an employee who has been represented from the time the dispute arose.

(d) Subject to Section 4906, if an employer files an application for adjudication and the employee is unrepresented at the time the application is filed, the employer shall be liable for any attorney's fees incurred by the employee in connection with the application for adjudication if the employee does not obtain a rebuttal report.

(e) The determination of whether an employer shall pay for medical evaluations of medical issues other than those specified in this article shall be governed by Section 4621.

(f) This section shall become operative for injuries occurring on and after January 1, 1991.

SEC. 26. Section 4065 of the Labor Code is repealed.

SEC. 27. Section 4067 of the Labor Code is amended to read:

4067. If the jurisdiction of the appeals board is invoked pursuant to Section 5803 upon the grounds that the effects of the injury have

recurred, increased, diminished, or terminated, a formal medical evaluation shall be obtained pursuant to this article.

When an agreed medical evaluator or a qualified medical evaluator selected by an unrepresented employee from a three-member panel has previously made a formal medical evaluation of the same or similar issues, the subsequent or additional formal medical evaluation shall be conducted by the same agreed medical evaluator or qualified medical evaluator, unless the workers' compensation judge has made a finding that he or she did not rely on the prior evaluator's formal medical evaluation, any party contested the original medical evaluation by filing an application for adjudication, or the prior evaluator is no longer qualified or readily available to prepare a formal medical evaluation, in which case Sections 4061 or 4062, as the case may be, shall apply as if there had been no prior formal medical evaluation.

SEC. 28. Section 4067.5 of the Labor Code is amended to read:

4067.5. This article shall become operative for injuries occurring on and after January 1, 1991.

SEC. 29. Section 4453 of the Labor Code is amended to read:

4453. (a) In computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, the average weekly earnings shall be taken at:

(1) Not less than one hundred twenty-six dollars ($126) nor more than two hundred ninety-four dollars ($294), for injuries occurring on and after January 1, 1983.

(2) Not less than one hundred sixty-eight dollars ($168) nor more than three hundred thirty-six dollars ($336), for injuries occurring on and after January 1, 1984.

(3) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and, for temporary disability, not less than the lesser of one hundred sixty-eight dollars ($168) or 1.5 times the employee's average weekly earnings from all employers, but in no event less than one hundred forty-seven dollars ($147), nor more than three hundred ninety-nine dollars ($399) for injuries occurring on and after January 1, 1990.

(4) Not less than one hundred sixty-eight dollars ($168) for permanent total disability, and for temporary disability, not less than the lesser of one hundred eighty-nine dollars ($189) or 1.5 times the employee's average weekly earnings from all employers, nor more than five hundred four dollars ($504), for injuries occurring on and after January 1, 1991.

(b) In computing average annual earnings for purposes of permanent partial disability indemnity, except as provided in Section 4659, the average weekly earnings shall be taken at:

(1) Not less than seventy-five dollars ($75) nor more than one hundred ninety-five dollars ($195), for injuries occurring on and after January 1, 1983.

(2) Not less than one hundred five dollars ($105) nor more than two hundred ten dollars ($210), for injuries occurring on and after

January 1, 1984.

(3) When the final adjusted permanent disability rating of the injured employee is 25 percent or greater, not less than one hundred five dollars ($105), nor more than two hundred twenty-two dollars ($222), for injuries occurring on and after January 1, 1991.

(c) Between the limits specified in subdivisions (a) and (b), the average weekly earnings, except as provided in Sections 4456 to 4459, shall be arrived at as follows:

(1) Where the employment is for 30 or more hours a week and for five or more working days a week, the average weekly earnings shall be the number of working days a week times the daily earnings at the time of the injury.

(2) Where the employee is working for two or more employers at or about the time of the injury, the average weekly earnings shall be taken as the aggregate of these earnings from all employments computed in terms of one week; but the earnings from employments other than the employment in which the injury occurred shall not be taken at a higher rate than the hourly rate paid at the time of the injury.

(3) If the earnings are at an irregular rate, such as piecework, or on a commission basis, or are specified to be by week, month, or other period, then the average weekly earnings mentioned in subdivision (a) shall be taken as the actual weekly earnings averaged for this period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay.

(4) Where the employment is for less than 30 hours per week, or where for any reason the foregoing methods of arriving at the average weekly earnings cannot reasonably and fairly be applied, the average weekly earnings shall be taken at 100 percent of the sum which reasonably represents the average weekly earning capacity of the injured employee at the time of his or her injury, due consideration being given to his or her actual earnings from all sources and employments.

(d) Every computation made pursuant to this section beginning January 1, 1990, shall be made only with reference to temporary disability or the permanent disability resulting from an original injury sustained after January 1, 1990. However, all rights existing under this section on January 1, 1990, shall be continued in force. Except as provided in Section 4661.5, disability indemnity benefits shall be calculated according to the limits in this section in effect on the date of injury and shall remain in effect for the duration of any disability resulting from the injury.

SEC. 30. Section 4600 of the Labor Code is amended to read:

4600. Medical, surgical, chiropractic, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including artificial members, which is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer. In the case of his or her neglect or refusal seasonably to do so, the employer is liable for the

reasonable expense incurred by or on behalf of the employee in providing treatment. After 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area. However, if an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury. If an employee requests a change of physician pursuant to Section 4601, the request may be made at any time after the injury, and the alternative physician or chiropractor shall be provided within five days of the request as required by Section 4601. For the purpose of this section, "personal physician" means the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, who has previously directed the medical treatment of the employee, and who retains the employee's medical records, including his or her medical history.

Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation judge, the employee submits to examination by a physician, he or she shall be entitled to receive in addition to all other benefits herein provided all reasonable expenses of transportation, meals and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination. Regardless of the date of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents ($0.21) a mile or the mileage rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

SEC. 31. Section 4624 of the Labor Code is repealed.

SEC. 32. Section 4624 is added to the Labor Code, to read:

4624. (a) From January 1, 1991, until June 30, 1992, and notwithstanding any other section of this article, fees for initial comprehensive industrial medical-legal reports charged by independent medical examiners, agreed medical evaluators, treating physicians and qualified medical evaluators shall be rebuttably presumed reasonable if the charges do not exceed the fees specified for each specialty category listed below:

Specialty Category	Fee Amount
Orthopedics	$ 984
Internal Medicine and Cardiology	$ 995
Neurology	$ 881
Psychiatry	$1,279
All others	$ 866

Charges exceeding the amounts for the involved specialties may be found reasonable if accompanied by supporting information provided by the physician.

(b) Annually, commencing on April 1, 1991, the administrative director shall publish the range of fees for initial comprehensive industrial medical-legal reports charged by independent medical examiners, qualified medical evaluators, agreed medical evaluators and treating physicians for the 12 months ending the previous December 31.

(c) The range of charges published pursuant to subdivision (b) shall be shown by five specialty categories: orthopedics, internal medicine and cardiology, neurology, psychiatry, and all others. The percentile of these charges presumed reasonable pursuant to subdivision (d), adjusted by multiplying each charge by one plus one-half of the percentage change in the Consumer Price Index for California published by the Division of Labor Statistics and Research of the Department of Industrial Relations for the 12 months ending the previous June 30, shall be shown in all instances.

(d) Commencing on July 1, 1992, charges of all physicians providing initial comprehensive industrial medical-legal reports shall be rebuttably presumed reasonable if the charges do not exceed the 73rd percentile of fees in the appropriate specialty as established in subdivision (b).

Charges exceeding the amounts rebuttably presumed reasonable for the involved specialty may be found reasonable if accompanied by supporting information provided by the physician. The Industrial Medical Council may promulgate reasonable guidelines defining appropriate types of supporting information.

(e) All charges for X-rays, laboratory services and other diagnostic tests provided in connection with an industrial medical-legal evaluation shall be in addition to the charges regulated by this section and shall be billed pursuant to Section 4626.

SEC. 33. Section 4625 of the Labor Code is amended to read:

4625. Notwithstanding subdivision (d) of Section 4628, all charges for initial comprehensive industrial medical-legal reports which are rebuttably presumed reasonable pursuant to Section 4624 shall be paid promptly pursuant to Section 4622. If the employer contests the reasonableness of the charges, the employer may file a petition with the appeals board to obtain reimbursement of the charges from the physician that are considered to be unreasonable.

SEC. 34. Section 4628 of the Labor Code is amended to read:

4628. (a) Except as provided in subdivision (c), no person, other than the physician who signs the medical-legal report, except a nurse performing those functions routinely performed by a nurse, such as taking blood pressure, shall examine the injured employee or participate in the nonclerical preparation of the report, including all of the following:

(1) Taking a complete history.

(2) Reviewing and summarizing prior medical records.

(3) Composing and drafting the conclusions of the report.

(b) The report shall disclose the name and qualifications of any person who administers diagnostic studies.

(c) If the initial outline of a patient's history or excerpting of prior medical records is not done by the physician, the physician shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant medical issues.

(d) No amount may be charged in excess of the direct charges for the physician's professional services and the reasonable costs of laboratory examinations, diagnostic studies, and other medical tests, and reasonable costs of clerical expense necessary to producing the report. Direct charges for the physician's professional services shall include reasonable overhead expense.

(e) Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

(f) Knowing failure to comply with the requirements of this section shall subject the physician to a civil penalty of up to one thousand dollars ($1,000) for each violation to be assessed by a workers' compensation judge or the appeals board.

(g) A physician who is assessed a civil penalty under this section may be terminated, suspended, or placed on probation as a qualified medical evaluator pursuant to subdivisions (k) and (*l*) of Section 139.2.

(h) Knowing failure to comply with the requirements of this section shall subject the physician to contempt pursuant to the judicial powers vested in the appeals board.

SEC. 35. Section 4635 of the Labor Code is amended to read:

4635. As used in this article:

(a) "Qualified injured worker" means an employee who meets both of the following requirements:

(1) The employee's expected permanent disability as a result of the injury, whether or not combined with the effects of a prior injury or disability, if any, permanently precludes, or is likely to preclude, the employee from engaging in his or her usual occupation or the position in which he or she was engaged at the time of injury, hereafter referred to as "medical eligibility."

(2) The employee can reasonably be expected to return to

suitable gainful employment through the provision of vocational rehabilitation services, hereafter referred to as "vocational feasibility."

(b) "Qualified rehabilitation representative" means a person capable of developing and implementing a vocational rehabilitation plan and whose experience and regular duties involve the evaluation, counseling, or placement of disabled persons, and who is familiar with this article.

(c) "Independent vocational evaluator" means a qualified rehabilitation representative, who, in addition to the requirements of subdivision (b), has one of the following qualifications:

(1) A doctorate or master's degree in vocational counseling or its equivalent and one or more years full-time experience in vocational counseling of industrially injured employees.

(2) A doctor of medicine degree and one or more years full-time experience in psychiatric or psychological evaluation of disabled adults in relation to rehabilitation counseling.

(3) A doctorate or master's degree in counseling or psychology or their equivalent and two or more years full-time employment using rehabilitation counseling techniques and conducting vocational evaluations of disabled adults under the direct supervision of an independent vocational evaluator.

(4) A baccalaureate degree in any field and three or more years full-time employment using rehabilitation counseling techniques and conducting vocational evaluations of disabled adults under the direct supervision of an independent vocational evaluator.

(d) "Vocational rehabilitation services" means those services required to determine if an employee can reasonably be expected to return to suitable gainful employment and those services reasonably necessary to provide an employee with the opportunity to return to suitable gainful employment. These services may include, but are not limited to, vocational and medical evaluation, counseling, job analysis, job modification assistance, retraining, including on-the-job training or training for alternative employment, formal training, academic instruction, and job placement assistance.

(e) "Vocational rehabilitation plan" means the written description of and rationale for the manner and means by which it is proposed that a qualified injured worker may be returned to suitable gainful employment. The plan may contemplate modification of the employee's occupation at the time of injury, provision for alternative work with the same employer, direct job placement assistance, on-the-job training, formal training, academic instruction, job placement assistance, or self-employment. The plan shall specify the anticipated completion date of vocational rehabilitation services and the amount and source of payments to be made to the qualified injured workers during the pendency of the plan. The plan shall also define the responsibilities of the employee, employer, qualified rehabilitation representative, and any other parties in implementing the plan.

(f) "Suitable gainful employment" means that employment or self-employment which is reasonably attainable and which offers an opportunity to restore the employee as soon as practicable and as near as possible to maximum self-support, due consideration being given to the employee's qualifications, likely permanent disability, vocational interests and aptitudes, preinjury earnings and future earning capacity, and the present and projected labor market. No one factor shall be considered solely in determining suitable gainful employment.

SEC. 36. Section 4636 of the Labor Code is amended to read:

4636. (a) When aggregate total disability continues for 90 days, the employer immediately shall assign a qualified rehabilitation representative who shall meet with the employee and explain the employee's rights and obligations pertaining to vocational rehabilitation, the nature and scope of vocational rehabilitation services to which the employee may be entitled, the maintenance allowance payable under Section 139.5, and the effect of any delay in the treating physician's determination of medical eligibility. When aggregate total disability exceeds 90 days and the employee has not previously been identified as meeting the medical eligibility requirements of paragraph (1) of subdivision (a) of Section 4635, the qualified rehabilitation representative shall provide the employee's treating physician with a job description, developed jointly with the employee and the employer, and the physical requirements of the employee's duties at the time of injury in the form and manner prescribed by the administrative director, and request the treating physician to determine the employee's medical eligibility for vocational rehabilitation services. The treating physician's determination of medical eligibility shall take into account the employee's current and probable future medical condition, an estimate of the employee's current and potential functional limitations, the ability of the employee to accept and participate in vocational rehabilitation services if and when indicated, recommendations for subsequent evaluation or services, if any, the ability of the employee to engage in light work in a modified or alternative capacity, if available, and other information as may reasonably be prescribed by rules and regulations of the administrative director.

(b) If the employee's treating physician is unable to make the assessment of medical eligibility at the time of initial contact by the qualified rehabilitation representative, the qualified rehabilitation representative shall continue to monitor the employee's recovery and request the treating physician to report as soon as the physician is able to determine whether the employee is medically eligible for vocational rehabilitation services. The treating physician shall report no less frequently than every 60 days thereafter. The report also shall include an opinion concerning the physical capabilities of the employee at the time of each report. The reports shall continue to be made until the physician provides a report concluding one of the

following:

(1) The employee is released to return to work at his or her usual occupation or, if the employee was engaged in another occupation at the time of injury, the occupation the employee was engaged in at the time of injury.

(2) The employee's permanent disability as the result of the injury, whether or not combined with the effects of a prior injury or disability, if any, permanently precludes, or is likely to preclude, the employee from engaging in the employee's usual occupation or the occupation in which the employee was engaged at the time of injury.

(c) When aggregate total disability exceeds 365 days and the employee has not been previously identified as medically eligible for vocational rehabilitation, there shall be a rebuttable presumption that the employee is medically eligible for vocational rehabilitation services.

(d) Immediately upon receipt of the treating physician's final report required by this section, the employer shall provide a copy to the employee together with notice of the procedure to be followed in contesting the treating physician's determination. The notice shall be in writing in the form and manner prescribed by the administrative director, and shall include advice that the employee may be eligible for services if the employee is unable to return either to his or her usual occupation or the occupation in which he or she was engaged at the time of injury.

SEC. 37. Section 4637 of the Labor Code is amended to read:

4637. (a) Within 10 days after the employee is medically eligible under subdivision (c) of Section 4636, or the employer receives a physician's report, or knowledge of a physician's opinion, indicating an employee is medically eligible, the employer shall notify the employee of his or her medical eligibility for vocational rehabilitation services. The notice shall be in writing, in the form and manner prescribed by the administrative director, with a copy forwarded to the vocational rehabilitation unit within the Office of Benefit Determination. The notice shall include all of the following:

(1) An explanation of vocational rehabilitation services available to the employee, including the maintenance allowance payable under Section 139.5 and the effect of any delay in the acceptance of vocational rehabilitation services.

(2) Instructions as to how the employee may apply for vocational rehabilitation services.

(3) Notice that failure to apply within 90 days of receipt of notice of medical eligibility may terminate the employee's entitlement to vocational rehabilitation services, unless the treating physician determines that the employee is medically unable to participate in the provision of vocational rehabilitation services except as otherwise provided by Section 5410.

(4) Notice of the employee's right to an agreed upon qualified rehabilitation representative and to request an evaluation of vocational feasibility prior to any acceptance or rejection of

vocational rehabilitation services and the right to request a change of qualified rehabilitation representative pursuant to Section 4640.

(5) Notice that vocational rehabilitation services may not be settled or otherwise converted to cash payments.

Immediately thereafter, unless the employee's medical condition precludes participation or the employee declines to accept vocational rehabilitation services, the employer shall assign a qualified rehabilitation representative, selected in agreement with the employee, to determine if the employee meets the vocational feasibility requirements of paragraph (2) of subdivision (a) of Section 4635. If agreement cannot be reached, a qualified rehabilitation representative shall be selected pursuant to Section 4640.

(b) If an employee is notified of his or her potential entitlement to vocational rehabilitation services pursuant to subdivision (a) and it is subsequently determined that the employee is not a qualified injured worker, the employer shall notify the employee, in the form and manner prescribed by the administrative director, that he or she is not entitled to further vocational rehabilitation services, the reasons therefor, and the procedure to be followed in contesting the determination.

SEC. 38. Section 4638 of the Labor Code is amended to read:

4638. (a) If the employee is determined to be a qualified injured worker, the qualified rehabilitation representative and the employee, jointly, shall develop an agreed-upon vocational rehabilitation plan.

Vocational rehabilitation plans which utilize an employee's transferable skills and experience in modified or alternative work with the same or a similar employer, where the qualified injured worker will have wages, hours, and working conditions similar to those at the time of injury, shall be preferable to plans that propose training for an occupation in which the employee has no skills or experience if the employee has the skills necessary to compete for other available employment at wages similar to those at the time of injury if the modified or alternative work later becomes unavailable. In furtherance of this policy, an insured employer in whose employment the injury occurred shall receive a refund, payable in the same manner as a return of a standard insurance premium, from the insurer that provided the security for the payment of compensation on the date of injury when the employer, pursuant to an approved vocational rehabilitation plan, returns the qualified injured worker to modified or alternative work at the employer's place of employment for 12 consecutive months. The refund shall be equal to the standard premium computed on the wages paid by the employer to the qualified injured worker during the 12-month period and shall be calculated as follows: multiply the workers' compensation insurance premium rate times the wages reported for workers' compensation insurance for the qualified injured worker during that 12-month period. For this calculation, the workers'

compensation insurance rate shall be the insurance premium rate or rates per one hundred dollars ($100) of payroll which were applicable to the payroll reported for the qualified injured worker during that 12-month period, modified by the experience modification factor or factors, if any, which were applicable to the employer during that 12-month period. During and after the 12-month period, the qualified injured worker shall be protected against discrimination pursuant to Section 132a.

(b) Within 90 days after determination of the employee's vocational feasibility, the employer shall do either of the following:

(1) Submit a vocational rehabilitation plan agreed to by the employee to the Office of Benefit Determination for review and approval.

(2) Request the Office of Benefit Determination to resolve any dispute concerning the provision of vocational rehabilitation services.

SEC. 39. Section 4642 of the Labor Code is amended to read:

4642. If the employer fails to assign a qualified rehabilitation representative or to commence vocational rehabilitation services in a timely manner as required by Section 4637, or otherwise causes any delay in the provision of vocational rehabilitation services, the full maintenance allowance shall be paid in its entirety by the employer, including the amount payable under paragraph (2) of subdivision (d) of Section 139.5, for the period of the delay.

SEC. 40. Section 4644 of the Labor Code is amended to read:

4644. (a) The liability of the employer for vocational rehabilitation services shall terminate when any of the following events occur:

(1) An employee who has received notice of potential eligibility to participate in a rehabilitation plan under Section 4637 declines vocational rehabilitation services in the form and manner prescribed by the administrative director.

(2) A qualified injured worker completes an approved vocational rehabilitation plan except as otherwise provided in subdivisions (c) and (d).

(3) The qualified injured worker unreasonably failed to complete an approved vocational rehabilitation plan.

(4) An employee has not requested vocational rehabilitation services within 90 days of the notification that the employee is medically eligible for vocational rehabilitation services. The liability of the employer for vocational rehabilitation services shall not terminate under this paragraph unless the employer, not earlier than 45 days nor later than 70 days after the employee's receipt of the notice required by Section 4637, reminds the employee of his or her right to vocational rehabilitation services or until the 21st day after the employee receives the reminder notification. The reminder notification shall be in writing, in the form and manner prescribed by the administrative director, and shall be served by certified mail. The provisions of this paragraph shall not apply if the employee

shows he or she was unable to comprehend the consequences of failing to timely request vocational rehabilitation services, or that, because of conditions beyond the control of the employee, the employee was unable to exercise his or her right to accept or decline vocational rehabilitation services.

(b) Nothing in this article shall preclude the deferral or interruption of vocational rehabilitation services upon agreement of the employee and employer or, if no agreement can be reached, upon a good cause determination by the administrative director.

(c) If a vocational rehabilitation plan has been commenced or completed, the employee shall be entitled to additional vocational rehabilitation services if the plan is determined to be inappropriate due to one of the following:

(1) A change in the employee's medical condition that precludes pursuit of or engagement in the plan occupation.

(2) Facts which with reasonable diligence could not have been reasonably discovered or were not available to the employee or employer at commencement of the plan.

(3) Failure by the employer to provide timely all services required by this article and the vocational rehabilitation plan when the plan has not been completed.

(4) Circumstances beyond the control of the employee or employer which render the plan inappropriate.

(d) Notwithstanding paragraph (2) of subdivision (a), if a qualified injured worker returns to modified or alternative work with the same employer or to work with a different employer as a result of direct job placement assistance and that employment terminates, other than for cause, within 12 months of the date the employee was employed at the modified or alternative work, and if that work is unavailable in the labor market, the employer shall be liable, subject to Section 4642, for additional vocational rehabilitation services. To qualify for additional vocational rehabilitation services, the employee shall demonstrate an inability to compete for suitable gainful employment with his or her existing skills.

SEC. 41. Section 4650 of the Labor Code is amended to read:

4650. (a) If an injury causes temporary disability, the first payment of temporary disability indemnity shall be made not later than 14 days after knowledge of the injury and disability, on which date all indemnity then due shall be paid, unless liability for the injury is earlier denied.

(b) If the injury causes permanent disability, the first payment shall be made within 14 days after the date of last payment of temporary disability indemnity. Where the extent of permanent disability cannot be determined at the date of last payment of temporary disability indemnity, the employer nevertheless shall commence the timely payment required by this subdivision and shall continue to make these payments until the employer's reasonable estimate of permanent disability indemnity due has been paid, and if the amount of permanent disability indemnity due has been

determined until that amount has been paid.

(c) Payment of temporary or permanent disability indemnity subsequent to the first payment shall be made as due every two weeks on the day designated with the first payment.

(d) If any indemnity payment is not made timely as required by this section, the amount of the late payment shall be increased 10 percent and shall be paid, without application, to the employee, unless the employer continues the employee's wages under a salary continuation plan, as defined in subdivision (g). No increase shall apply to any payment due prior to or within 14 days after the date the claim form was submitted to the employer under Section 5401. No increase shall apply when, within the 14-day period specified under subdivision (a), the employer is unable to determine whether temporary disability indemnity payments are owed and advises the employee, in the manner prescribed in rules and regulations adopted pursuant to Section 138.4, why payments cannot be made within the 14-day period, what additional information is required to make the decision whether temporary disability indemnity payments are owed, and when the employer expects to have the information required to make the decision.

(e) If the employer is insured for its obligation to provide compensation, the employer shall be obligated to reimburse the insurer for the amount of increase in indemnity payments, made pursuant to subdivision (d), if the late payment which gives rise to the increase in indemnity payments, is due less than seven days after the insurer receives the completed claim form from the employer. Except as specified in this subdivision, an employer shall not be obligated to reimburse an insurer nor shall an insurer be permitted to seek reimbursement, directly or indirectly, for the amount of increase in indemnity payments specified in this section.

(f) If an employer is obligated under subdivision (e) to reimburse the insurer for the amount of increase in indemnity payments, the insurer shall notify the employer in writing, within 30 days of the payment, that the employer is obligated to reimburse the insurer and shall bill and collect the amount of the payment no later than at final audit. However, the insurer shall not be obligated to collect, and the employer shall not be obligated to reimburse, amounts paid pursuant to subdivision (d) unless the aggregate total paid in a policy year exceeds one hundred dollars ($100). The employer shall have 60 days, following notice of the obligation to reimburse, to appeal the decision of the insurer to the Department of Insurance. The notice of the obligation to reimburse shall specify that the employer has the right to appeal the decision of the insurer as provided in this subdivision.

(g) For purposes of this section, "salary continuation plan" means a plan which meets both of the following requirements:

(1) The plan is paid for by the employer pursuant to statute, collective bargaining agreement, memorandum of understanding, or established employer policy.

(2) The plan provides the employee on his or her regular payday with salary not less than the employee is entitled to receive pursuant to statute, collective bargaining agreement, memorandum of understanding, or established employer policy and not less than the employee would otherwise receive in indemnity payments.

SEC. 42. Section 4702 of the Labor Code is amended to read:

4702. (a) Except as otherwise provided in this section and Sections 4553, 4554, 4557, and 4558, the death benefit in cases of total dependency shall be as follows:

(1) In the case of two or more total dependents and regardless of the number of partial dependents, ninety-five thousand dollars ($95,000), or for injuries occurring on and after January 1, 1991, one hundred fifteen thousand dollars ($115,000).

(2) In the case of one total dependent and one or more partial dependents, seventy thousand dollars ($70,000), or for injuries occurring on and after January 1, 1991, ninety-five thousand dollars ($95,000), plus four times the amount annually devoted to the support of the partial dependents, but not more than a total of ninety-five thousand dollars ($95,000), or for injuries occurring on and after January 1, 1991, one hundred fifteen thousand dollars ($115,000).

(3) In the case of one total dependent and no partial dependents, seventy thousand dollars ($70,000), or for injuries occurring on and after January 1, 1991, ninety-five thousand dollars ($95,000).

(4) In the case of no total dependents and one or more partial dependents, four times the amount annually devoted to the support of the partial dependents, but not more than seventy thousand dollars ($70,000), or for injuries occurring on and after January 1, 1991, a total of ninety-five thousand dollars ($95,000).

(b) The death benefit in all cases shall be paid in installments in the same manner and amounts as temporary total disability indemnity would have to be made to the employee, unless the appeals board otherwise orders. However, no payment shall be made at a weekly rate of less than two hundred twenty-four dollars ($224).

(c) Disability indemnity shall not be deducted from the death benefit and shall be paid in addition to the death benefit when the injury resulting in death occurs after September 30, 1949.

(d) All rights under this section existing prior to January 1, 1990, shall be continued in force.

SEC. 43. Section 4703.5 of the Labor Code is amended to read:

4703.5. In the case of one or more totally dependent minor children, after payment of the amount specified in Section 4702, and notwithstanding the maximum limitations specified in Sections 4702 and 4703, payment of death benefits shall continue until the youngest child attains age 18 in the same manner and amount as temporary total disability indemnity would have been paid to the employee, except that no payment shall be made at a weekly rate of less than two hundred twenty-four dollars ($224).

SEC. 44. Section 4850 of the Labor Code is amended to read:

4850. Whenever any city policeman, city, county, or district firefighter, sheriff or any officer or employee of a sheriff's office, any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, or lifeguard employed year round on a regular, full-time basis by a county of the first class, who is a member of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city or county, to leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until such earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3. This section shall apply only to city policemen, sheriffs or any officer or employee of a sheriff's office, and any inspector, investigator, detective, or personnel with comparable title in any district attorney's office, who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service, and excludes employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. It shall also apply to city, county, or district firefighters who are members of the Public Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code) and excludes employees of the city fire department, county fire department, and of any fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service. It shall also apply to deputy sheriffs subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). It shall also apply to lifeguards employed year round on a regular, full-time basis by counties of the first class who are subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division

4 of Title 3 of the Government Code). If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

This section shall become operative on January 1, 1990.

SEC. 45. Section 4903.1 of the Labor Code is amended to read:

4903.1. (a) The appeals board, arbitrator, or settlement conference referee, before issuing an award or approval of any compromise of claim, shall determine, on the basis of liens filed with it pursuant to subdivision (b) or (c), whether any benefits have been paid or services provided by a health care provider, a health care service plan, a group disability policy, including a loss of income policy, a self-insured employee welfare benefit plan, or a hospital service contract, and its award or approval shall provide for reimbursement for benefits paid or services provided under these plans as follows:

(1) When the referee issues an award finding that an injury or illness arises out of and in the course of employment, but denies the applicant reimbursement for self-procured medical costs solely because of lack of notice to the applicant's employer of his need for hospital, surgical, or medical care, the appeals board shall nevertheless award a lien against the employee's recovery, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract.

(2) When the referee issues an award finding that an injury or illness arises out of and in the course of employment, and makes an award for reimbursement for self-procured medical costs, the appeals board shall allow a lien, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care provider, a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract.

(3) When the referee issues an award finding that an injury or illness arises out of and in the course of employment and makes an award for temporary disability indemnity, the appeals board shall allow a lien as living expense under Section 4903, for benefits paid by a group disability policy providing loss of time benefits. Such lien shall be allowed to the extent that benefits have been paid for the same day or days for which temporary disability indemnity is awarded and shall not exceed the award for temporary disability indemnity. No lien shall be allowed hereunder unless the group disability policy provides for reduction, exclusion, or coordination of loss of time benefits on account of workers' compensation benefits.

(4) When the parties propose that the case be disposed of by way of a compromise and release agreement, in the event the lien claimant, other than a health care provider, does not agree to the amount allocated to it, then the referee shall determine the potential

recovery and reduce the amount of the lien in the ratio of the applicant's recovery to the potential recovery in full satisfaction of its lien claim.

(b) When a compromise of claim or an award is submitted to the appeals board, arbitrator, or settlement conference referee for approval, the parties shall file with the appeals board, arbitrator, or settlement conference referee any liens served on the parties.

(c) Any lien claimant under Section 4903 or this section shall file its lien with the appeals board in writing upon a form approved by the appeals board. The lien shall be accompanied by a full statement or itemized voucher supporting the lien and justifying the right to reimbursement and proof of service upon the injured worker, or if deceased, upon the worker's dependents, the employer, the insurer, and the respective attorneys or other agents of record.

(d) The appeals board shall file liens required by subdivision (c) immediately upon receipt. Numbers shall be assigned pursuant to subdivision (c) of Section 5500.

SEC. 46. Section 4903.4 of the Labor Code is amended to read:

4903.4. When a dispute arises concerning a lien for expenses incurred by or on behalf of the injured employee as provided by Article 2 (commencing with Section 4600) of Chapter 2 of Part 2, the appeals board may resolve the dispute in a separate proceeding, which may include binding arbitration upon agreement of the employer, lien claimant, and the employee, if the employee remains a party to the dispute, according to the rules of practice and procedure.

SEC. 47. Section 4904 of the Labor Code is amended to read:

4904. If notice is given in writing to the insurer, or to the employer if uninsured, setting forth the nature and extent of any claim that is allowable as a lien, the claim is a lien against any amount thereafter payable as compensation, subject to the determination of the amount and approval of the lien by the appeals board. When the Employment Development Department has served an insurer or employer with a lien claim, the insurer or employer shall notify the Employment Development Department, in writing, as soon as possible, but in no event later than 15 working days after commencing disability indemnity payments. When a lien has been served on an insurer or an employer by the Employment Development Department, the insurer or employer shall notify the Employment Development Department, in writing, within 10 working days of filing an application for adjudication, a stipulated award, or a compromise and release with the appeals board. In determining the amount of lien to be allowed for unemployment compensation disability benefits under subdivision (f) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days of disability for which an award of compensation for temporary disability indemnity is made and for which the employer has not reimbursed the Employment Development Department pursuant to Section 2629.1

of the Unemployment Insurance Code. In determining the amount of lien to be allowed for unemployment compensation benefits and extended duration benefits under subdivision (g) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days for which an award of compensation for temporary total disability is made. In the case of agreements for the compromise and release of a disputed claim for compensation, the applicant and defendant may propose to the appeals board, as part of the compromise and release agreement, an amount out of the settlement to be paid to any lien claimant claiming under subdivision (f) or (g) of Section 4903. If the lien claimant objects to the amount proposed for payment of its lien under a compromise and release settlement or stipulation, the appeals board shall determine the extent of the lien claimant's entitlement to reimbursement on its lien and make and file findings on all facts involved in the controversy over this issue in accordance with Section 5313. The appeals board may approve a compromise and release agreement or stipulation which proposes the disallowance of a lien, in whole or in part, only where there is proof of service upon the lien claimant by the defendant, not less than 15 days prior to the appeals board action, of all medical and rehabilitation documents and a copy of the proposed compromise and release agreement or stipulation. The determination of the appeals board, subject to petition for reconsideration and to the right of judicial review, as to the amount of lien allowed under subdivision (f) or (g) of Section 4903, whether in connection with an award of compensation or the approval of a compromise and release agreement, shall be binding on the lien claimant, the applicant, and the defendant, insofar as the right to benefits paid under the Unemployment Insurance Code for which the lien was claimed. The appeals board may order the amount of any lien claim, as determined and allowed by it, to be paid directly to the person entitled, either in a lump sum or in installments.

Where unemployment compensation disability benefits have been paid pursuant to the Unemployment Insurance Code while reconsideration of an order, decision, or award is pending, or has been granted, the appeals board shall determine and allow a final amount on the lien as of the date the board is ready to issue its decision denying a petition for reconsideration or affirming, rescinding, altering or amending the original findings, order, decision, or award.

The appeals board shall not be prohibited from approving a compromise and release agreement on all other issues and deferring to subsequent proceedings the determination of a lien claimant's entitlement to reimbursement if the defendant in any of these proceedings agrees to pay the amount subsequently determined to be due under the lien claim.

SEC. 48. Section 4906 of the Labor Code is amended to read:

4906. (a) No charge, claim, or agreement for the legal services or

disbursements mentioned in subdivision (a) of Section 4903, or for the expense mentioned in subdivision (b) of Section 4903, is enforceable, valid, or binding in excess of a reasonable amount. The appeals board may determine what constitutes a reasonable amount.

(b) No attorney or agent shall demand or accept any fee from an employee or dependent of an employee for the purpose of representing the employee or dependent of an employee in any proceeding of the division, appeals board, or any appellate procedure related thereto until the amount of the fee has been approved or set by the appeals board.

(c) Any fee agreement shall be submitted to the appeals board for approval within 10 days after the agreement is made.

(d) In establishing a reasonable attorney's fee, consideration shall be given to the responsibility assumed by the attorney, the care excercised in representing the applicant, the time involved, and the results obtained.

(e) At the initial consultation, an attorney shall furnish the employee a written disclosure form promulgated by the administrative director which shall clearly and prominently describe the procedures available to the injured employee or his or her dependents. The disclosure form shall describe this section, the range of attorney's fees customarily approved by the appeals board, and the attorney's fees provisions of Section 4064 and the extent to which an employee may receive compensation without incurring attorney's fees. The disclosure form shall include the telephone number of the Office of Benefit Assistance and Enforcement together with the statement that the employee may receive answers at that number to questions concerning entitlement to compensation or the procedures to follow to receive compensation. A copy of the disclosure form shall be signed by the employee and the attorney and sent to the employer, or insurer or third-party administrator, if either is known, by the attorney within 15 days of the employee's and attorney's execution thereof.

SEC. 49. Section 5270 of the Labor Code is amended to read:

5270. This part shall not apply in cases where an injured employee or dependent is involved unless the employee or dependent is represented by an attorney.

SEC. 50. Section 5271 of the Labor Code is amended to read:

5271. (a) The parties to a dispute submitted for arbitration may select any eligible attorney from the list prepared by the presiding workers' compensation judge to serve as arbitrator. However, when the disputed issue involves insurance coverage, the parties may select any attorney as arbitrator upon agreement of the parties.

(b) If the parties cannot select an arbitrator by agreement, either party may request the presiding workers' compensation judge to assign a panel of five arbitrators selected at random from the list of eligible attorneys. No more than three arbitrators on a five-member panel may be defense attorneys, no more than three may be applicant's attorneys, and no more than two may be retired workers'

compensation judges or appeals board commissioners.

(c) For each party in excess of one party in the capacity of employer and one party in the capacity of injured employee or lien claimant, the presiding judge shall randomly select two additional arbitrators to add to the panel. For each additional party in the capacity of employer, the presiding judge shall assign a retired workers' compensation judge or retired appeals board commissioner and an applicant's attorney. For each additional party in the capacity of injured employee or lien claimant, the presiding judge shall assign a retired workers' compensation judge or retired appeals board commissioner and a defense attorney. For each additional other party, the presiding judge shall assign two arbitrators to the panel, in order of rotation from case to case, as follows: a retired workers' compensation judge or retired appeals board commissioner, an applicant's attorney, a defense attorney.

(d) A party may petition the presiding workers' compensation judge to remove a member from the panel pursuant to Section 170.1 of the Code of Civil Procedure. The presiding workers' compensation judge shall assign another eligible attorney to replace any member removed under this subdivision.

(e) Each party or lien claimant shall strike two members from the panel, and the remaining attorney shall serve as arbitrator.

SEC. 51. Section 5272 of the Labor Code is amended to read:

5272. Arbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers' compensation judge, as set forth in Chapter 1 (commencing with Section 5300) of Part 4, except for the following:

(a) Arbitrators shall have no power to order the injured worker to be examined by a qualified medical evaluator pursuant to Sections 5701 and 5703.5.

(b) Arbitrators shall not have power of contempt.

SEC. 52. Section 5273 of the Labor Code is amended to read:

5273. (a) In disputes between an employee and an employer, the employer shall pay all costs related to the arbitration proceeding, including use of facilities, hearing reporter per diems and transcript costs.

(b) In all other disputes, the costs of the arbitration proceedings, including the arbitrator's compensation, shall be paid as follows:

(1) By the parties equally in any dispute between an employer and an insurer, or an employer and a lien claimant.

(2) By the parties equally in proceedings subject to Section 5500.5.

(3) By the dependents in accordance with their proportionate share of death benefits, where there is no dispute as to the injury causing death.

(c) Disputes regarding the costs or fees for arbitration shall be within the exclusive jurisdiction of the appeals board, and shall be determined initially by the presiding judge of the district office.

SEC. 53. Section 5275 of the Labor Code is amended to read:

5275. (a) Disputes involving the following issues shall be

submitted for arbitration:

(1) Insurance coverage.

(2) Right of contribution in accordance with Section 5500.5.

(3) Permanent disability, where an informal rating has indicated that the permanent disability will be 15 percent standard or less, and the presiding judge determines that the case will not be set for hearing within 110 calendar days from the date of the filing of the application for adjudication.

(4) Permanent disability, where an informal rating has indicated that the permanent disability will be 20 percent standard or less, and the presiding judge determines that the case will not be set for hearing within 150 calendar days from the date of the filing of the application for adjudication.

(b) Paragraphs (3) and (4) of subdivision (a) shall not be applicable if the applicant has requested and received a continuance or delay in the time periods for proceedings set forth in Section 5502.

(c) Paragraphs (3) and (4) of subdivision (a) shall become operative on January 1, 1991, regardless of the date of injury, and shall become inoperative on January 1, 1994.

(d) By agreement of the parties, any issue arising under Division 1 (commencing with Section 50) or Division 4 (commencing with Section 3200) may be submitted for arbitration, regardless of the date of injury.

SEC. 54. Section 5278 is added to the Labor Code, to read:

5278. (a) No disclosure of any offers of settlement made by any party shall be made to the arbitrator prior to the filing of the award.

(b) There shall be no ex parte communication by counsel or the parties with the arbitrator or a potential arbitrator except for the purpose of scheduling the arbitration hearing or requesting a continuance.

SEC. 54.5. Section 5307.1 of the Labor Code is amended to read:

5307.1. (a) (1) The administrative director, after public hearings, shall adopt and revise, no less frequently than biennially, an official medical fee schedule which shall be prima facie evidence of the reasonableness of fees charged for medical services provided pursuant to this division.

(2) The administrative director shall include services provided by physical therapists in the official fee schedule adopted and revised pursuant to paragraph (1). Nothing in this paragraph shall affect the ability of physicians to continue to be reimbursed for their services in accordance with the official medical fee schedule adopted pursuant to paragraph (1) for the provision of services within their scope of practice.

(b) Nothing in this section shall prohibit a medical provider from charging an employer or carrier fees in excess of those set forth on the official medical fee schedule, when reasonable, and accompanied by itemization and explanation; provided, however, that in no event shall a physician charge in excess of his or her usual fee.

(c) In the event of a dispute between the physician and the

employer or carrier concerning the medical fees charged, the physician may be allowed a reasonable fee for testimony, if a physician testifies pursuant to the employer's or carrier's subpoena, and the referee determines that the medical fee charged was reasonable.

(d) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses as defined by Section 4620.

SEC. 54.7. Section 5401 of the Labor Code is amended to read:

5401. (a) Within one working day of receiving notice or knowledge of injury under Section 5400 or 5402, which injury results in lost time beyond the date of injury or which results in medical treatment beyond first aid, the employer shall provide, personally or by first-class mail, a claim form and a notice of potential eligibility for benefits under this division to the injured employee, or in the case of death, to his or her dependents. As used in this subdivision, "first aid" means any one-time treatment of minor scratches, cuts, burns, splinters, or other minor industrial injury by other than a physician or other licensed health care provider in those instances where the treatment performed by the other licensed health care provider is conducted in consultation with a physician. "Minor industrial injury" shall not include serious exposure to a hazardous substance as defined in subdivision (i) of Section 6302. The claim form shall request the injured employee's name and address, the time and place where the injury occurred, and the nature of the injury. The notice shall include a description of the procedures and assistance available to the employee on his or her own behalf, the procedure to be used to commence proceedings for the collection of compensation for the purposes of this chapter, the telephone number of the Office of Benefit Assistance and Enforcement, and a statement that the employee has a right to consult an attorney or the Office of Benefit Assistance and Enforcement, or both, for assistance. Claims forms shall be available at district offices of the Employment Development Department and the Office of Benefit Assistance and Enforcement. Claims forms may be made available to the employee from any other source.

(b) The completed claim form shall be filed with the employer by the injured employee, or, in the case of death, by a dependent of the injured employee, or by an agent of the employee or dependent. Except as provided in subdivision (c), a claim form is deemed filed when it is personally delivered to the employer or received by the employer by first-class or certified mail. A dated copy of the completed form shall be provided by the employer to the employer's insurer and to the employee, dependent, or agent who filed the claim form.

(c) The claim form shall be filed with the employer prior to the injured employee's entitlement to late payment supplements under subdivision (d) of Section 4650, or prior to the injured employee's request for a medical evaluation under Section 4061 or 4062. Filing

of the claim form with the employer shall constitute commencement of proceedings for the purposes of this chapter and shall establish the jurisdiction of the appeals board. For purposes of this subdivision, a claim form is deemed filed when it is personally delivered to the employer or mailed to the employer by first-class or certified mail. After filing of the claim form, the parties shall have the right to commence discovery, including subpoena of records and deposition of witnesses, and lien claimants shall have the right to commence proceedings by filing an application for adjudication of claim as provided under subdivision (d). The parties shall also have the right to receive copies of the records of the treating physician or physicians.

(d) A lien claimant may file an application for adjudication of claim pursuant to subdivision (c) alleging a right to reimbursement of any amounts set forth under subdivisions (a) to (i), inclusive, of Section 4903 only if all of the following conditions are met:

(1) The lien claimant has properly filed and served a lien under Section 4903.1.

(2) With the exception of a lien claim for medical-legal expenses provided under Article 2.5 (commencing with Section 4620) of Chapter 2 of Part 2, a period of 90 days has elapsed since the filing of the lien under Section 4903.1, and no application for adjudication of claim has been filed by the employee, the employee's dependents, or the employer.

(3) All of the requirements of this division regarding the filing of an application for adjudication have been met, except the filing of the claim form with the employer. If a claim form has been filed with the employer, the lien claimant shall attach a copy of the claim form to the application. If the lien claimant is unable to obtain a copy or no claim form has been filed, the lien claimant shall attach to the application a declaration specifying the efforts made by the lien claimant to secure a copy or to encourage filing of the claim form by the employee.

SEC. 55. Section 5401.5 is added to the Labor Code, to read:

5401.5. If the employee is represented by an attorney, the attorney shall send an information request form, promulgated by the appeals board after public hearing, to the employer or to the insurer or third-party administrator, if either is known, together with the disclosure form pursuant to subdivision (e) of Section 4906.

The form shall provide the following information: name and address of the attorney; social security number of the employee, if any; date of injury; part or parts of the body affected by the alleged injury; carrier or third-party administrator of the employer, if known; date of birth of the employee; earnings at the time of injury; occupation at the time of injury; dates for which the injury caused disability; names and addresses of doctors or hospitals providing medical treatment not provided or paid for by the employer or carrier; other cases filed for industrial injuries by the employee; whether the employee is claiming temporary disability indemnity,

permanent disability indemnity, reimbursement for medical expenses, medical treatment, compensation at the proper rate, vocational rehabilitation and any other issues; demand for medical records or reports in the possession of the employer, and the insurer or third-party administrator, if any; a listing of medical reports, records, and other information being provided; whether the employee will agree to arbitration pursuant to Part 3.5 (commencing with Section 5270); the venue selected by the employee if an application for adjudication of claim is filed, and notice of the employer's right to object only within 30 days of receipt of the information request form; and notice that a response to the information request form must be served on the employee's attorney within 30 days of receipt of the information request form. The attorney shall accompany the information request form with all medical reports and records in the possession of the employee.

SEC. 56. Section 5401.6 is added to the Labor Code, to read:

5401.6. (a) If the employee is represented by an attorney, the employer, insurer, or third-party administrator shall serve a response, on a form promulgated by the appeals board after public hearing, on the employee's attorney within 30 days of receipt of an information request form.

(b) The response shall contain the following information: name and address of the attorney, if any; name and address of the injured worker; date of claimed injury; name and address of the employer; name and address of the insurer or third-party administrator, if any; earnings of the employee; whether compensation was paid, including total, weekly rate, and date of last payment; whether medical treatment was provided, including date of last treatment; whether the employer denies liability for injury arising out of and occurring in the course of employment, temporary disability indemnity as to period claimed or weekly rate, permanent disability indemnity, further medical treatment, self-procured medical treatment, vocational rehabilitation, or other issues; whether the employer agrees to arbitration pursuant to Part 3.5 (commencing with Section 5270); whether the employer objects to the employee's choice of venue; and a listing of medical reports, records, and other information being served.

(c) The information furnished by the employee in the information request form and the information furnished in the employer's response shall not be admissible in any proceeding before the appeals board.

SEC. 57. Section 5402 of the Labor Code is amended to read:

5402. Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400. If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be

presumed compensable under this division. The presumption is rebuttable only by evidence discovered subsequent to the 90-day period.

SEC. 58. Section 5500 of the Labor Code is amended to read:

5500. (a) No pleadings other than the application and answer shall be required. Both shall be in writing and shall conform to forms prescribed by the appeals board in its rules of practice and procedure, simply but clearly and completely delineating all relevant matters of agreement and all issues of disagreement within the jurisdiction of the appeals board, and providing for the furnishing of any additional information as the appeals board may properly determine necessary to expedite its hearing and determination of the claim.

(b) An application for adjudication of claim may be filed at any time there is a bona fide dispute after service of the claim form required by Section 5401. The application shall specify the nature of the dispute, the action being requested of the appeals board, the efforts previously made to resolve the issues in dispute, and shall be accompanied by medical reports or other documents indicating the basis of the dispute and supporting the action requested.

(c) The appeals board shall assign a distinctive number to all documents immediately upon receipt. The same number shall be assigned to all documents received concerning the same employee's claim with the same date of injury.

SEC. 59. Section 5501.5 is added to the Labor Code, to read:

5501.5. (a) The application for adjudication of claim shall be filed in any of the following locations:

(1) In the county where the injured employee or dependent of a deceased employee resides on the date of filing.

(2) In the county where the injury allegedly occurred, or, in cumulative trauma and industrial disease claims, where the last alleged injurious exposure occurred.

(3) In the county where the employee's attorney maintains his or her principal place of business, if the employee is represented by an attorney.

(b) If the county selected for filing has more than one office of the appeals board, the application shall be filed at any location of the appeals board within that county that meets the criteria specified in subdivision (a). The written consent of the employee, or dependent of a deceased employee, to the selected venue site shall be filed with the application.

(c) If the venue site where the application is to be filed is the county where the employee's attorney maintains his or her principal place of business, the attorney for the employee shall indicate that venue site when forwarding the information request form required by Section 5401.5. The employer shall have 30 days from receipt of the information request form to object to the selected venue site. Where there is an employer objection to a venue site under paragraph (3) of subdivision (a), then the application shall be filed

pursuant to either paragraph (1) or (2) of subdivision (a).

(d) If there is no appeals board office in the county where venue is permitted under subdivision (a), the application shall be filed at the appeals board office nearest the residence on the date of filing of the injured employee or dependent of a deceased employee, or the nearest place where the injury allegedly occurred, or, in cumulative trauma and industrial disease claims, where the last injurious exposure occurred, or nearest the location where the attorney of the employee maintains his or her principal place of business, unless the employer objects under subdivision (c).

SEC. 60. Section 5501.6 is added to the Labor Code, to read:

5501.6. (a) An applicant or defendant may petition the appeals board for a change of venue and a change of venue shall be granted for good cause. The reasons for the change of venue shall be specifically set forth in the request for change of venue.

(b) If a change of venue is requested for the convenience of witnesses, the names and addresses of these witnesses and the substance of their testimony shall be specifically set forth in the request for change of venue.

SEC. 61. Section 5502 of the Labor Code is amended to read:

5502. (a) Except as provided in subdivisions (b) and (d), the hearing shall be held not less than 10 days, and not more than 60 days, after the date the application is filed.

(b) The administrative director shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the application is filed if the issues in dispute are any of the following:

(1) The employee's entitlement to medical treatment pursuant to Section 4600.

(2) The employee's entitlement to, or the amount of, temporary disability indemnity payments.

(3) The employee's entitlement to vocational rehabilitation services, or the termination of an employer's liability to provide these services to an employee.

(4) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.

(5) Any other issues requiring an expedited hearing and determination as prescribed in rules and regulations of the administrative director.

(c) The administrative director shall report quarterly to the Governor and to the Legislature concerning the frequency and types of issues which are not heard and decided within the period prescribed in this section and the reasons therefor.

(d) (1) In all cases in which the applicant is represented by an attorney, a mandatory settlement conference shall be conducted by a referee not less than 10 days, and not more than 30 days, after the filing of an application for adjudication of claim. If the dispute is not

resolved, the regular hearing shall be held within 75 days after the application for adjudication is filed.

(2) The settlement conference shall be conducted by a referee who is eligible to be a workers' compensation judge or eligible to be an arbitrator under Section 5270.5. At the mandatory settlement conference, the referee shall have the authority to resolve the dispute, including the authority to approve a compromise and release or issue a stipulated finding and award, and if the dispute cannot be resolved, to frame the issues and stipulations for trial. The appeals board shall adopt any regulations needed to implement this subdivision. The presiding workers' compensation judge shall supervise settlement conference referees in the performance of their judicial functions under this subdivision.

(3) Ten days before the mandatory settlement conference, the parties shall file a conference statement noting the specific issues in dispute, listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

(4) The workers' compensation judge may conduct a conference only in cases in which the applicant is not represented by an attorney.

(5) In cases in which the applicant is not represented by an attorney the workers' compensation judge assigned to hear a case may conduct a conference not less than 10 days, and not more than 30 days, after the filing of an application for adjudication of claims. If the dispute is not resolved, the regular hearing shall be held within 75 days after the application for adjudication is filed. Only a workers' compensation judge may conduct a conference if the employee is not represented by an attorney.

(e) Subdivision (d) shall apply to all applications filed on and after January 1, 1991, regardless of the date of injury, and shall become inoperative on January 1, 1994.

SEC. 62. Section 5502.5 is added to the Labor Code, to read:

5502.5. A continuance of any conference or hearing required by Section 5502 shall not be favored, but may be granted by a workers' compensation judge upon any terms as are just upon a showing of good cause. When determining a request for continuance, the workers' compensation judge shall take into consideration the complexity of the issues, the diligence of the parties, and the prejudice incurred on the part of any party by reasons of granting or denying a continuance.

SEC. 63. Section 5703.5 of the Labor Code is amended to read:

5703.5. (a) The appeals board, at any time after an application is filed and prior to the expiration of its jurisdiction may, upon the agreement of a party to pay the cost, direct an unrepresented employee to be examined by a qualified medical evaluator selected

by the appeals board, within the scope of the qualified medical evaluator's professional training, upon any clinical question then at issue before the appeals board.

(b) The administrative director or his or her designees, upon the submission of a matter to an information and assistance officer, may, upon the agreement of a party to pay the cost, and with the consent of an unrepresented employee direct the injured employee to be examined by a qualified medical evaluator selected by the medical director, within the scope of the qualified medical evaluator's professional training, upon any clinical question, other than those issues specified in Section 4061, then pertinent to the investigation of the information and assistance officer.

(c) The 1989 and 1990 amendments to this section shall become operative for injuries occurring on and after January 1, 1991.

SEC. 64. Section 2629 of the Unemployment Insurance Code is amended to read:

2629. (a) Except as provided in this section, an individual is not eligible for disability benefits under this part for any day of unemployment and disability for which he or she has received, or is entitled to receive, "other benefits" in the form of cash payments.

(b) "Other benefits," as used in this section and Section 2629.1, means either of the following:

(1) Temporary disability indemnity under a workers' compensation law of this state or of any other state or of the federal government including, for purposes of this Code and Sections 4903 and 4904 of the Labor Code, a maintenance allowance paid pursuant to Section 139.5 of the Labor Code.

(2) Temporary disability benefits under any employer's liability law of this state or of any other state or of the federal government.

(c) Except for a maintenance allowance paid pursuant to Section 139.5 of the Labor Code, if these "other benefits" are less than the amount an individual would otherwise receive as disability benefits under this part, he or she shall be entitled to receive, for that day, if otherwise eligible, disability benefits under this part reduced by the amount of these "other benefits."

(d) An individual shall be entitled to receive, for any day, if otherwise eligible, disability benefits under this part reduced by the amount of the maintenance allowance and permanent disability indemnity if both of the following conditions are met:

(1) The individual elects to receive the maximum permanent disability indemnity pursuant to paragraph (2) of subdivision (d) of Section 139.5 of the Labor Code.

(2) The sum of the maintenance allowance and permanent disability indemnity is less than the amount an individual would otherwise receive as disability benefits under this part.

SEC. 65. The amendments made by this act to Sections 29 and 110, subdivision (a) of Section 139, and subdivisions (h) and (i) of Section 139.2, of the Labor Code, concerning the medical director, are declaratory of existing law. These amendments clarify the intent

of existing law concerning the appointment of the medical director. The medical director shall be appointed by the Industrial Medical Council. The director of the department and the administrative director of the division shall not have any authority to appoint a medical director.

SEC. 66. The amendments made by this act to Section 112 of the Labor Code are declaratory of existing law.

SEC. 67. The amendments made by this act to subdivision (c) of Section 139.5 of the Labor Code, pertaining to the payment of additional living expenses, and subdivisions (a) and (c) of Section 4702, of the Labor Code, with respect to the crediting of accrued disability indemnity against the amount of the death benefit, and subdivision (a) of Section 4906 of the Labor Code, with respect to legal services, are not intended by the Legislature to make a change in the law as it existed with respect to these provisions prior to January 1, 1990.

SEC. 68. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1551

An act to add Sections 30101.8 and 30889.3 to the Streets and Highways Code, relating to toll bridges.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 30101.8 is added to the Streets and Highways Code, to read:

30101.8. (a) The commission may grant toll-free and reduced-rate passage on all toll bridges under its jurisdiction to class I vehicles occupied by three or more persons, including the driver, and to buses. For bridges within the area under the jurisdiction of the Metropolitan Transportation Commission, the commission shall exercise its authority in cooperation with the Metropolitan Transportation Commission as otherwise required by this division.

(b) Notwithstanding subdivision (a), tolls on the bridges shall be maintained at rates sufficient to meet any obligation to the holders

of bonds secured by the bridge toll revenues, as set forth in any bond resolution in effect on January 1, 1991, or covenants contained in bonds issued pursuant to the bond resolution, and the commission shall revise or eliminate any toll-free or reduced-rate toll schedule adopted pursuant to subdivision (a) as necessary to ensure compliance with those obligations.

SEC. 2. Section 30889.3 is added to the Streets and Highways Code, to read:

30889.3. (a) Notwithstanding any other provision of law, the Metropolitan Transportation Commission shall adopt, for implementation not later than June 30, 1991, a reduced-rate schedule of tolls for class I vehicles occupied by three or more persons, including the driver, and for buses crossing the Carquinez and Martinez-Benicia Bridges. The reduced-rate toll for those vehicles shall be determined by the Metropolitan Transportation Commission in cooperation with the Department of Transportation, and may consist of reduced daily tolls or an annual payment in lieu of daily tolls. The reduced-rate toll schedule adopted by the Metropolitan Transportation Commission shall be approved by the California Transportation Commission in accordance with Section 30888.

(b) Notwithstanding subdivision (a), tolls on the bridges shall be maintained at rates sufficient to meet any obligation to the holders of bonds secured by the bridge toll revenues, as set forth in any bond resolution in effect on January 1, 1991, or covenants contained in bonds issued pursuant to the bond resolution, and the California Transportation Commission shall revise or eliminate the reduced-rate toll schedule adopted pursuant to subdivision (a) as necessary to ensure compliance with those obligations.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1552

An act relating to public social services.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Medi-Cal eligibility workers fulfill an important role for the State of California. They assist needy families and individuals to obtain the assistance they need to remediate ill health and medical emergencies.

(b) Without appropriate eligibility staffing levels at the county level and appropriately trained staff, timely, accurate, and efficient Medi-Cal eligibility determinations for needy families and individuals is compromised and needy persons are forced to wait while their physical or health conditions decline.

(c) On the basis of total Medi-Cal payments made by the State of California, each Medi-Cal eligibility worker annually processes applications which generate $2,300,000 in Medi-Cal health care costs.

(d) It is in the interests of the State of California to assure effective eligibility processing for Medi-Cal benefits so that those individuals eligible for assistance receive it in a timely, accurate, and efficient manner, and those individuals who do not meet state eligibility criteria do not become a financial responsibility of the state.

(e) Over the past decade, the duties of Medi-Cal eligibility workers at the county level have become increasingly complex due to the continuous passage and implementation of federal and state laws and regulations and subsequent court interpretation of those laws and regulations.

(f) It is in the interest of the state to review the current processing and eligibility requirements for Medi-Cal health care benefits in order to develop a simplified eligibility determination process which is both less complicated for clients to complete and workers to process and less costly for government, at all levels, to administer.

SEC. 2. (a) The State Department of Health Services, in consultation with representatives of clients who receive Medi-Cal health care benefits, hospitals, clinics, and skilled nursing facilities which provide a disproportionate share of services to Medi-Cal beneficiaries, county supervisors, county welfare departments, and employee organizations representing persons who provide health care services to Medi-Cal beneficiaries, shall do all of the following:

(1) Evaluate current Medi-Cal eligibility determination procedures and forms.

(2) Develop one or more proposals for the simplification of the Medi-Cal eligibility determination process through a reduction of

paperwork and related process requirements.

(3) Report to the appropriate policy and fiscal committees of the Legislature by December 31, 1991, on the evaluation and proposals developed to simplify current Medi-Cal eligibility procedures and forms.

CHAPTER 1553

An act to add Section 90.1 to the Streets and Highways Code, relating to transportation.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 90.1 is added to the Streets and Highways Code, to read:

90.1. The department shall develop and implement a recruitment and incentive program for highway engineer positions which may include, but not be limited to, participation by the department in the repayment of student loans of persons recruited through the program.

The department shall not expend more than one hundred twenty-five thousand dollars ($125,000) annually to develop and implement the program, which may be paid from funds available to the department from the State Highway Account in the State Transportation Fund.

CHAPTER 1554

An act to add and repeal Chapter 6.5 (commencing with Section 13855) to Title 6 of Part 4 of the Penal Code, relating to criminals, and making an appropriation therefor.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.5 (commencing with Section 13855) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 6.5. ARMED CAREER CRIMINALS

13855. The Legislature hereby finds that a small number of repeat felony offenders, known as a career criminals, commit a

disproportionate number of crimes, often while armed with firearms. In enacting this chapter, the Legislature intends to assist law enforcement authorities in identifying, apprehending, prosecuting, and imprisoning armed career criminals.

13855.1. As used in this chapter, "armed career criminal" means a person who has previously been convicted of three serious felonies in this state, or offenses committed in other jurisdictions which include all of the elements of a serious felony. As used in this section, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

13855.2. The Department of Justice may request the Department of Corrections, the Department of Motor Vehicles, and local law enforcement agencies to provide existing information from their files regarding persons identified as armed career criminals. The Department of Corrections, the Department of Motor Vehicles, and law enforcement agencies shall, when requested by the Department of Justice, provide copies of existing information maintained in their files regarding persons identified as armed career criminals and provide followup information as it becomes available.

13855.4. (a) The Armed Career Criminal Pilot Project is hereby created. The Department of Justice shall, subject to the availability of funds, implement the project to do all of the following:

(1) Evaluate the propensity of armed career criminals released from federal, state, and local penal institutions to commit further offenses.

(2) Utilize information from the Departments of Justice, Corrections, and Motor Vehicles, and appropriate federal agencies to provide law enforcement officials within the pilot project with comprehensive information on armed career criminals in their communities.

(3) Assist in identifying suspects based upon analysis and comparison of methods of operations.

(4) Provide information for sentencing purposes.

(5) Develop an automated data-processing system to store, search, and retrieve information collected on armed career criminals.

(b) The pilot program shall operate in all counties, except the following counties: Imperial, Los Angeles, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, San Luis Obispo, and Ventura.

(c) The department shall provide reports to the Legislature on the Armed Career Criminal Project every March 1, beginning in 1992. The report shall include the number of files reviewed, the number of career criminals monitored, the number of crimes solved, and documentation showing how this program contributed to solving these crimes. The pilot program shall be considered successful if each year (1) 400,000 files are reviewed, (2) 1,000 career criminals are monitored, (3) documentation can be provided showing that at least 300 violent felony crimes were solved that would not have been solved without this pilot, and (4) there is at

least an annual 10 percent increase in the number of crimes solved as a result of this pilot program.

13855.5. This chapter shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. The sum of one hundred forty thousand dollars ($140,000) is hereby appropriated from the Department of Justice's State Asset Forfeiture Fund to implement the Armed Career Criminal Pilot Project.

CHAPTER 1555

An act to add Section 14520.3 to the Government Code, relating to transportation.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 14520.3 is added to the Government Code, to read:

14520.3. (a) The commission, in consultation with the Controller, the Treasurer, and the Superintendent of Banks, shall conduct a study and submit recommendations to the Governor and the Legislature on or before January 1, 1992, on the feasibility of establishing, within state government, a California Transportation Assistance Bank, hereafter the bank, to carry out the functions described in subdivision (b).

(b) To assist in financing the state's transportation infrastructure, the bank would act as a financing intermediary by accumulating and investing proceeds of the increased vehicle fuel tax revenues received pursuant to Sections 7351 and 8651 of the Revenue and Taxation Code, as added by Chapters 105 and 106 of the Statutes of 1989, respectively, and funds received through additional borrowing against future revenues, and by making the proceeds of those

investments available for long-range transportation infrastructure improvements.

(c) The study shall be accomplished using resources available to the commission.

CHAPTER 1556

An act to add Chapter 9 (commencing with Section 58900) to Part 31 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 9 (commencing with Section 58900) is added to Part 31 of the Education Code, to read:

CHAPTER 9. DEMONSTRATION OF RESTRUCTURING IN PUBLIC EDUCATION

Article 1. Establishment

58900. There is hereby established a Demonstration of Restructuring in Public Education.

58901. (a) The Legislature finds that as the state's population of schoolage children continues to change and grow more diverse in its racial, ethnic, linguistic, and socioeconomic background, and that as no group's characteristics, experience, or background represents the majority experience of California's pupil population, efforts to restructure public education in California must fundamentally enable schools and educators to better meet the needs of, and ensure educational equity for, a diverse pupil population.

(b) It is, therefore, the intent of the Legislature to support and encourage restructuring in California public education in order to improve pupil learning.

(c) The Legislature further finds and declares that pupils learn best when school personnel and school structure are responsive to their individual characteristics and strengths, and when the school establishes an atmosphere of high expectations for all pupils, regardless of sex, racial, ethnic, linguistic, or socioeconomic background. All advice and communication to pupils and their parents should be designed and delivered to communicate these attitudes.

(d) The Legislature finds that education restructuring involves shifting from the current system of accountability, which is based upon rules, to a system of accountability based upon performance.

Education restructuring therefore involves a revision in school governance and management procedures in order to enable professional educators to respond appropriately to pupil requirements, with the central goal of improving learning for all California public school pupils.

(e) It is the intent of the Legislature to initiate a demonstration of education restructuring in participating elementary, high school, and unified school districts, to the end that school districts will do all of the following for schools included in the application:

(1) Specify achievement outcomes for all pupils in core competencies including, but not limited to, communication skills and knowledge, problem solving techniques, abstract reasoning, teamwork, and entry level, job-related skills and, in particular, for pupils performing below their potential, strive to accelerate their achievement beyond the overall rates of pupil improvement and achievement.

(2) Work with local schools to reach an agreed upon definition of educational quality.

(3) Set clear goals for achieving educational quality.

(4) Provide schools with the flexibility to meet those goals.

(5) Offer high quality technical assistance and support to local schools consistent with agreed upon goals.

(6) Hold local schools accountable for pupil and staff performance based, at a minimum, upon measurable pupil behaviors and knowledge.

(f) The Legislature further finds that increased decisionmaking authority for educators at local schools corresponds with increased accountability for results, particularly for pupil achievement.

(g) It is the intent of the Legislature that the demonstration of education restructuring test the feasibility of fundamental changes in the governance and management of public schooling over a five-year period, by allowing school districts and schools to develop and adapt instructional strategies that prove to be highly successful in improving both pupil achievement and pupil, parent, and staff satisfaction with schooling.

(h) The Legislature intends to foster, by the Demonstration of Restructuring in Public Education, improved education for California's pupils by assisting educators to do all of the following:

(1) Foster self-esteem and a sense of belonging in all pupils by assisting every pupil to meet rigorous academic standards and relating the educational process and instructional strategies to diverse pupil needs in today's complex society.

(2) Motivate and inspire California's pupils to become capable, responsible citizens in a multicultural democracy.

(3) Be sensitive to the diversity of pupil needs, learning styles, talents, and levels of development.

(i) The Legislature encourages the business community to become a full partner in the efforts to restructure California's public education and to offer its resources, including time, expertise and

skills, leadership and financial assistance to further this demonstration of restructuring in public education.

(j) The Legislature finds that existing laws and regulations governing public schools often serve as a hindrance to meaningful, long-lasting educational reform. It is the intent of the Legislature to create a demonstration program that does not result in rules and regulations governing school programs or in paperwork and reports for school and school district personnel. It is the further intent of the Legislature that participating school districts retain maximum flexibility and freedom from state regulation in designing and implementing the demonstration program. The Legislature encourages program participants to utilize their ability to seek waivers of the Education Code and state regulations to allow them to design the most effective demonstration of restructuring.

Article 2. Demonstration Elements

58902. "District" for the purposes of this article means any school district or consortium of school districts eligible to apply to participate in the demonstration of restructuring in education.

58902.5. School district governing boards shall develop and implement policies and procedures pursuant to this chapter that support the schoolsite goals and objectives of the participating schools.

58903. (a) Each school district, in developing and implementing policies and procedures pursuant to this chapter, shall consult with businesses, public institutions of higher education, public and private nonprofit social service and child development agencies, and other organizations, as appropriate, may apply for funds to conduct a demonstration of restructuring in education. Applicant school districts shall describe their efforts to consult with those entities as a condition for the submission of an application.

(b) Each participating school district shall have maximum flexibility in the development and implementation of a demonstration of restructuring in education, in order to implement a local design to support and improve pupil learning.

58904. Each applicant school district governing board shall develop policies and procedures to increase site-level decisionmaking at participating schools maintained by the school district, to enable all of the following:

(a) Parents, community members representing the diverse racial, ethnic, gender, and socioeconomic backgrounds, the school pupil population, teachers of secondary school students, schoolsite administrators, the various categories of school employees, and other school staff to set goals, objectives, and expenditure priorities for improving instruction at that school, and to participate in decisionmaking about policies and procedures established pursuant to subdivision (b). It is the intent of the Legislature to ensure meaningful access by and participation of parents in the design and

governance of a schoolsite, and, thus, school districts and the participating schools should develop policies and procedures to enable parents that traditionally have not participated in school governance to participate, and should consider providing training, accessible meeting times and locations, and other methods to encourage active participation.

(b) Classroom teachers and school level administrators to design and implement policies and procedures consistent with the goals and objectives established pursuant to subdivision (a), which shall include, but need not be limited to, all of the following:

(1) Selection and assignment of certificated and noncertificated school personnel in accordance with Chapter 5 (commencing with Section 45100) of Part 25.

(2) Development and enrichment of subject matter offerings that build upon state-recommended frameworks and district adopted standards in order to provide a rigorous core curriculum for all pupils, including higher order thinking; design and implementation of diverse instructional approaches to respond to the variety of pupil learning needs; adaptation of curricular and instructional strategies specifically designed to meet the diverse needs of a multicultural and multilingual population; organization of the school for instruction; and selection of instructional materials.

(3) Expenditure of funds for instruction, including, but not limited to, instructional materials, staff training, and personnel.

58905. Each school included in the application shall design and implement policies and procedures that include all of the following core restructuring elements when applicable to elementary or secondary schools or both:

(a) Curriculum, instruction, and assessment designed to meet individual pupil needs while assisting all pupils to meet high subject matter standards.

Instructional strategies shall go beyond teacher lectures and may include cooperative and mastery learning as a school-wide strategy. Strategies should decrease teacher workloads and increase contact time between teachers and pupils. This may be accomplished, for example, by organizing teachers into teams in two or more subject areas in order to promote a rigorous core curriculum for all pupils, including reading and writing skills for their development and critical thinking skills in the core subject matter areas required for high school graduation.

An expanded and enriched curriculum should be offered to all pupils within and across subject matter areas, for example, by organizing teachers into teams, or by promoting cross-discipline curriculum development and implementation on an articulated, multigrade basis.

The curriculum and the instructional strategies to implement these objectives shall provide early and sustained opportunities for limited-English-proficient and non-English-speaking pupils to become proficient in all English language skills by using a variety of

instructional methods. The school curriculum may also offer opportunities for pupils to become proficient in two or more languages.

The testing of pupils in demonstration schools shall move away from reliance on multiple-choice testing to an authentic pupil performance based system that strives to provide a holistic assessment of each pupil's improvement and achievement. Greater emphasis shall be placed, for example, upon a pupil's writing as a better way of assessing thinking and problem solving skills.

The curricular, instructional strategies, and assessment tools shall also provide for accelerating the achievement of pupils performing below their potential to levels beyond the overall rates of pupil improvement and achievement.

(b) A plan for inclusion in appropriate curriculum programs new and expanded opportunities for 11th and 12th grade pupils to attend classes in colleges and universities, to enroll in specialized schools and programs, and to participate in internships or other field work with business, industry, schools, and community organizations. These opportunities shall be fostered and implemented in both the public and private sectors.

No project shall receive funding if there is any indication that this component is designed or implemented in a fashion so that pupils are directed, rather than counseled, regarding these opportunities, or if the activities in any way foster the tracking of pupils.

(c) Assess, and where necessary, redesign the roles and involvement of parents and all other persons who participate or work in the educational program at the school. Staff development, including leadership development, which emphasizes decisionmaking skills and organizational principles of teamwork and collaboration, shall be a critical component in reorganizing and restructuring the school for effective instruction.

(1) Roles and responsibilities may be differentiated among all school personnel, particularly instructional personnel, in order to provide more effective instruction to pupils. The anticipated need to provide increased support and assistance to beginning teachers may be achieved, for example, by reducing their instructional or pupil loads to permit their observation of instructional approaches utilized by experienced and effective teachers, or to allow time for mentoring and peer assistant relationships among all teachers.

(2) Meaningful roles and responsibilities for parents shall be included as a part of the project. In addition to assisting pupils at home and at school, parents shall be given greater amounts of information and authority to participate in the placement decisions for their children in specific classes or programs. Placement considerations may include schools within schools to expand program diversity, open enrollment among schools that have different programs and instructional emphases, and specialized high schools to enhance particular talents in pupils.

(d) The use of technology shall be addressed, at a minimum, in the

following dimensions:

(1) Technology as an instructional methodology to assist and enhance pupil learning.

(2) Teaching pupils how to use the technology.

(3) Technology as an instrument to better manage information and to enhance the organizational and administrative functioning of the school.

(e) Subject to the availability of separate funding pursuant to Section 58925.5, elementary school projects shall include a preschool program component such as the federal Headstart Program, or a program with similar goals operating as a state preschool program pursuant to the requirements of Chapter 2 (commencing with Section 8200) of Part 6, or which may require requests to waive provisions of the Education Code or state regulations pursuant to Sections 33050 and 33051. All children four years of age or older from low-income families shall be given the opportunity to attend a preschool program.

Subject to the availability of separate funding pursuant to Section 58925.5, a restructuring proposal which involves a high school may include a schoolage parenting and infant development program operated pursuant to the requirements of Chapter 2 (commencing with Section 8200) of Part 6.

It is the intent of the Legislature that applicant school districts and schools consider contracting with local community agencies that may offer state-subsidized child development, preschool or schoolage parenting and infant development, in order to provide linkages to existing child care and development programs and to avoid duplicating or fragmenting child development service delivery.

The child care components authorized by this subdivision shall be deemed an expansion of existing state supported programs and an integral enhancement of the restructuring proposal. If separate funding pursuant to Section 58925.5 is made available for those purposes, the superintendent, subject to existing statutes and regulations, and a review of the quality of competing applications for preschool and schoolaged parent funding, shall give preference to high quality proposals that are included in a demonstration proposal in the approval of any expansion funding to demonstration district projects providing for one or both of these programs.

58905.2. Schools included in the application shall specifically address the special needs of the cultural and linguistic diversity of the participating schools' pupil population through the development of policies and procedures to implement the core restructuring elements pursuant to Section 58905.

58905.5. Each application may include, on behalf of a participating school, a request to waive any provision of the Education Code or regulation, provided the waiver request conforms to Section 44669 of Chapter 3 of Part 25.

It is not the intent of the Legislature that the approval of those waivers jeopardize statutes and regulations established to ensure

equal education opportunities for ethnic, linguistic minority, and handicapped pupils.

58906. Demonstration grants shall be awarded in accordance with the following requirements and considerations:

(a) A two dimensional matrix shall be developed and utilized in which one axis represents three types of schools, as determined by the achievement performance of pupils as reported by the Superintendent of Public Instruction, including predominantly high-performing pupils, predominantly moderately performing pupils, and predominantly low-performing pupils, and in which the second axis represents urban, suburban, and rural school districts.

The highest quality proposals from each of the cells in the matrix shall be funded in the following order:

(1) Three proposals from the cells representing predominantly low-performing pupils.

(2) Two proposals from the cells representing predominantly moderately-performing pupils.

(3) One proposal from the cells representing predominantly high-performing pupils.

This sequence shall be repeated until the State Board of Education determines either that the quality of proposals remaining to be funded is such that funding is not warranted, or that available funding has been fully utilized, or both.

The collective total enrollment represented in all of the schools selected for demonstration funding shall, to the maximum extent possible, reflect the racial, ethnic, gender, and socioeconomic composition of the state pupil population in kindergarten and grades 1 to 12, inclusive.

(b) It is the intent of the Legislature that demonstration grants be awarded based on the quality and extensiveness of communitywide support for the submitted proposal and to proposals that design new or adapt current restructuring elements specifically to meet the needs of a diverse pupil population and that represent a significant departure in process, organization, or content from the ordinary school or classroom organization, assignment of school staff responsibilities, curriculum development, and instructional methods.

The Legislature believes that communitywide support and schoolsite leadership can best be determined by a state-level selection process that includes an oral presentation given by the applicant to the advisory committee.

(c) Consideration may be given to each school district that can demonstrate that the district has already achieved success in implementing any of the restructuring elements described.

(d) Consideration also shall be given to each district that proposes additional, or alternative restructuring options of high quality which are consistent with the goals of this chapter.

58906.5. It is the intent of the Legislature that each school district that has an approved demonstration proposal which includes an

element to provide preschool services pursuant to subdivision (e) of Section 58905 receive separate funding pursuant to Section 58925.5 in addition to the demonstration grant in an amount per child not less than that provided under the State Preschool Program and not more than that provided under the Headstart Program depending upon a determination by the Superintendent of Public Instruction, based upon the nature and scope of the proposed preschool program.

It is further the intent of the Legislature that each applicant that has an approved demonstration proposal that includes an element to provide schoolage parenting and infant development services pursuant to subdivision (e) of Section 58905 shall receive, in addition to funding provided under the demonstration grant, separate funding pursuant to Section 58925.5 in an amount per pupil that is not less than that provided to existing schoolage parenting and infant development programs funded under Chapter 2 (commencing with Section 8200) of Part 6.

58907. Each applicant school district shall establish and implement policies and procedures in order to improve pupil achievement in low-performing schools within the proposal. Applicant districts, as part of any demonstration proposal, may apply for the highest level of demonstration funding in order to provide for additional restructuring in demonstration schools defined as low-performing. It is the intent of the Legislature that in developing policies and procedures to assist all schools, applicant districts give consideration to all of the following:

(a) Standards of expectations for pupil achievement that exceed districtwide standards of pupil achievement and state-recommended model curriculum standards.

(b) Offering all pupils access to a rigorous, comprehensive core curriculum and advanced placement programs and classes which include critical thinking and higher level skills, including, at minimum, the elimination of tracking based upon pupil achievement.

(c) Instructional strategies and supplementary assistance designed to assist all pupils to exceed districtwide standards of pupil achievement.

(d) Staff development for school personnel designed to support curriculum and instruction necessary for pupils to exceed districtwide standards of pupil achievement and state-recommended model curriculum standards.

(e) Monitoring and evaluation of school progress toward implementing the management, curriculum, and instruction necessary to support pupil achievement of districtwide standards and state-recommended model curriculum standards.

(f) Coordinated services between schools and social services and health agencies including children's protective services, juvenile justice services, nonschool based preschool services, and health care services. It is the intent of the Legislature that this coordination be based upon joint planning among these agencies and comprehensive

assessments of the need to: provide services; coordinate service delivery; fill gaps in existing services; and collaborate to address the provision of needed services.

(g) Expanded schooldays and school years in order to provide opportunities for increased instructional time, tutoring by staff, pupils or volunteers, an environment conducive to learning before and after school and personalized instruction, mentoring, and information from other elementary or secondary students, college students, and adults.

(h) Outside assistance as necessary to support effective management and teaching at the school; for example, assistance in planning, implementation, staff development, and assessment from universities, colleges, business and industry, county offices of education, or nonprofit agencies dedicated toward improved school functioning and higher pupil achievement.

58908. Each applicant school district shall demonstrate how staff development consistent with Chapter 3.1 (commencing with Section 44670) of Part 25 will be made available to participating school personnel in order to support and assist the implementation of the restructuring elements specified in the district plan.

58909. Each applicant school district shall demonstrate how parent education, information, and support will be provided for parents of all racial, ethnic, gender, or socioeconomic backgrounds to be involved in the development and implementation of the restructuring demonstration, and for each parent to be involved in decisionmaking and support for the education program of his or her child.

58910. (a) Each school participating in the demonstration program shall prepare a school plan within a time period specified in the district proposal to the state. The plan shall indicate how the provision of educational instruction in kindergarten and grades 1 to 12, inclusive, as appropriate, shall be restructured.

(b) It is the intent of the Legislature that the school plans prepared reflect the unique pupil and organizational characteristics of each school.

(c) Each school plan shall be filed with the appropriate school district.

Article 3. Selection of Program Participants and Awarding Demonstration Grants

58914. (a) School districts and consortia of school districts interested in applying for a demonstration grant may first obtain a planning grant from the state.

(b) The application for the planning grant shall be a letter of intent to submit a proposal for restructuring education which is signed by the governing board of the applicant school district or consortium of school districts, provided that the collective bargaining representative has been consulted prior to submittal of

the application.

58915. (a) Each applicant school district shall develop a demonstration proposal in consultation with businesses, colleges or universities, other organizations as appropriate, classroom teachers, school level administrators, other school personnel, including the various categories of classified employees, parents, and the collective bargaining representative for certificated and classified employees of the school district.

(b) Each demonstration proposal shall be submitted jointly by the applicant school district and the collective bargaining representative of the certificated employees of the school district.

(c) Each demonstration proposal shall include, but need not be limited to, all of the following:

(1) A description of the elements to restructure education in the applicant school or schools over the five-year demonstration period.

(2) Proof that the demonstration proposal has been developed in accordance with Section 58915, and that agreement has been reached by the governing board or boards of applicant districts and each of the respective collective bargaining representatives for certificated school employees.

(3) A spending plan for demonstration funds, including evidence of the incorporation of state funds, and to the extent feasible, federal and private funds, into the demonstration of restructuring in education.

(4) A description of an evaluation plan to assess the degree of success toward achieving the intended restructuring outcomes. The plan shall describe all outcome measurements in authentic performance terms for pupils and staff.

(5) Agreement by the school district to cooperate with the independent evaluation conducted pursuant to this chapter.

(d) Any demonstration proposal may include one or more requests to waive provisions of the Education Code or state regulations pursuant to Sections 33050 and 33051, or Article 12 (commencing with Section 44666) of Chapter 3 of Part 25, as necessary or desirable, to effectively implement the district's restructuring proposal.

58915.5. School districts and schools, in preparing and implementing demonstration proposals, and the Superintendent of Public Instruction, in reviewing and recommending to the State Board of Education, and the board, in selecting proposals to be funded, shall ensure that demonstration activities do not in any way promote or perpetuate racial, ethnic, gender, or socioeconomic isolation or segregation among pupils.

Article 4. Responsibilities of the Superintendent of Public Instruction, the State Department of Education, and the State Board of Education

58916. The Superintendent of Public Instruction shall do all of the

following with respect to the demonstration of restructuring in education under this chapter:

(a) Disseminate information to all school districts on the availability of the program, after consultation with representatives of classroom teachers, school and district level administrators, school boards, parents, and business and industry. These representatives shall reflect the racial, ethnic, gender, and socioeconomic diversity of California.

The superintendent shall advise the education policy committees of both houses of the Legislature and the Governor regarding the proposed representatives. The superintendent shall wait for a minimum of 30 calendar days after providing the names in writing before selecting and notifying a representative.

The representatives shall be provided opportunities to advise the superintendent on matters including, but not limited to:

(1) Their interpretation of the legislative intent with respect to education restructuring under this chapter.

(2) The statutory requirements governing the demonstration of restructuring in education.

(3) The requirements for submission of applications for planning grants and demonstration grants.

(4) The criteria to be used for the approval of planning and demonstration grants.

(b) Make special outreach efforts to inform school districts with chronically low-performing schools about the demonstration, encourage these districts to apply for education restructuring grants, and, at the request of the school or school district, assist schools and districts to develop and implement locally developed strategies designed to improve these schools.

(c) Recommend school districts to the State Board of Education to participate in the demonstration of restructuring in education, in consultation with representatives of classroom teachers, school level administrators, parents, and businesses.

(d) Provide funding to districts selected to participate, to the extent funding for this purpose is provided by the Legislature and Governor.

58917. The State Board of Education shall select districts to participate in the demonstration of restructuring in education, consistent with this chapter.

Article 5. Evaluation

58920. (a) It is the intent of the Legislature to contract for an independent evaluation of education restructuring implemented pursuant to this chapter.

(b) The purposes of evaluation shall include, but need not be limited to: (1) an assessment of the nature, scope, and quality of implementation of education restructuring; (2) recommendations regarding any needed modifications in state statutes, policies, or

procedures in order to support and assist implementation of local education restructuring; and (3) assessments of the effectiveness of each of the restructuring elements in shifting from a rule-oriented to a pupil performance-oriented accountability system for public education measured by authentic measures of pupil performance, and in pupil, parent, and school employee satisfaction with pupil learning, school organization, and governance and management.

(c) The evaluation shall include all the following:

(1) A measure of pupil progress in attaining subject matter standards assessed. The evaluation shall determine any changes in learning outcomes of pupils in participating schools and school districts, and in particular, the learning outcomes for pupils performing below their potential and for all pupils by race, ethnicity, gender, linguistic, and socioeconomic background, and any other appropriate characteristic.

(2) An assessment of the nature and quality of instruction to pupils in participating schools and school districts.

(3) An assessment of the school environment, as measured by school attendance, discipline, and dropout data.

(4) Information regarding any changes in roles or responsibilities among participating individuals, including teachers, administrators, other school staff, parents, pupils, and participating entities, such as businesses, colleges and universities, and educational organizations.

(5) An assessment of the degree of implementation, and measures of effectiveness, of restructuring components implemented, particularly as implementation affects measures of pupil learning and pupil, parent, teacher, administrator, and community satisfaction with participating schools.

(6) An assessment of the funding level required to support the restructuring, including identification of an appropriate funding level to support both initial planning and ongoing costs, an assessment of whether and to what extent existing resources may fund ongoing costs of restructuring, and an evaluation of the use and integration of federal, state, local, and private funding to support restructuring.

(d) The demonstration of restructuring in education shall be deemed to be effective for the purposes of this section if there is a sustained increase in the learning outcomes of pupils for pupils of all levels of achievement and pupil, parent, and staff satisfaction with participating schools.

(e) It is the intent of the Legislature that the evaluation commence upon the implementation of the demonstration of restructuring in education, and continue for the five-year demonstration period.

58921. The Legislative Analyst, in consultation with representatives from the State Department of Education and the Department of Finance, shall select an independent contractor to conduct the evaluation. The Legislative Analyst shall direct the management of the evaluation.

58922. The Legislative Analyst shall submit interim reports to the State Department of Education, the Legislature, and the Governor on an annual basis until the final report is submitted. The final report shall include recommendations regarding modification, continuation, or expansion of the restructuring in education demonstration.

58923. (a) It is the intent of the Legislature that local evaluations of the demonstration of restructuring in education enable the local school community to hold schools and school districts accountable for significant improvement in the learning outcomes of pupils from all racial, ethnic, linguistic, gender, and socioeconomic backgrounds during the demonstration period.

(b) Each school district and consortium of school districts participating in the demonstration of restructuring in education shall assess the success of their pupils in meeting curriculum standards adopted by the school district.

Article 6. Funding

58924. Planning grants provided pursuant to this chapter shall be for an amount up to thirty dollars ($30) per pupil, with a minimum planning grant of ten thousand dollars ($10,000).

If the total amount requested by all planning applicants exceeds the funding appropriated for those purposes, the State Board of Education shall not provide for a pro rata reduction in the funding of the proposals, but shall approve applications to the amount of funds appropriated, in accordance with Sections 58906 and 58916.

58925. It is the intent of the Legislature that each demonstration grant consist of a five-year grant awarded to each school district or consortium of districts selected to participate. The total amount of the demonstration grant shall be based on the number of pupils enrolled in schools participating in the demonstration of restructuring in education each year, multiplied by up to two hundred dollars ($200) per pupil per year, depending upon the nature and scope of the proposed demonstration.

58925.5. It is the intent of the Legislature that each school district with an approved proposal to provide preschool and schoolage parenting and child development services pursuant to subdivision (e) of Section 58905 and Section 58906.5, be provided funding for that purpose from amounts that have been separately appropriated for the specific purposes of subdivision (e) of Section 58905 and Section 58906.5.

58926. The State Board of Education may vary the amount of the demonstration grant, depending on the nature and magnitude of the restructuring proposal submitted.

58927. The demonstration grants shall support all components of education restructuring pursuant to this act, exclusive of the provision of preschool and schoolage parenting and child development services.

58928. Any participating school may use the school-based coordination program and funding provisions in this code to further the goals and objectives of an approved restructuring demonstration proposal.

SEC. 2. (a) The sum of six million eight hundred thousand dollars ($6,800,000) is hereby appropriated from the General Fund to be allocated as follows:

(1) Six million seven hundred fifty thousand dollars ($6,750,000) to the State Department of Education for the 1990–91 fiscal year for the planning grants as set forth in the Demonstration of Restructuring in Education, as added to Chapter 9 (commencing with Section 58900) of Part 31 of the Education Code.

(2) Fifty thousand dollars ($50,000) to the Legislative Analyst for the 1990–91 fiscal year for the purpose of designing and administering the first year of the evaluation required by Sections 58920 to 58922, inclusive, of the Education Code.

(b) The Superintendent of Public Instruction shall expend no more than 6 percent of the amount appropriated for the planning and implementation of the Demonstration of Restructuring in Public Education, as added to Chapter 9 (commencing with Section 58900) of Part 31 of the Education Code, as follows:

(1) For the purposes of program administration, no more than 3 percent.

(2) For the purposes of outreach and assistance to schools and school districts, particularly low-performing schools, no more than 3 percent.

(c) No funds appropriated pursuant to this section shall be expended for the purposes of subdivision (f) of Section 58907.

CHAPTER 1557

An act to amend Section 1203.073 of the Penal Code, relating to controlled substances.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1203.073 of the Penal Code, as amended by Chapter 43 of the Statutes of 1990, is amended to read:

1203.073. (a) A person convicted of a felony specified in subdivision (b) may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted in such a case, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Except as provided in subdivision (a), probation shall not be

granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

(1) Any person who is convicted of violating Section 11351 of the Health and Safety Code by possessing for sale, or Section 11352 of the Health and Safety Code by selling, a substance containing 28.5 grams or more of cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code, or 57 grams or more of a substance containing cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code.

(2) Any person who is convicted of violating Section 11378 of the Health and Safety Code by possessing for sale, or Section 11379 of the Health and Safety Code by selling, 28.5 grams or more of methamphetamine, or a substance containing 28.5 grams or more of methamphetamine, or 57 grams or more of a substance containing methamphetamine.

(3) Any person who is convicted of violating subdivision (a) of Section 11379.6 of the Health and Safety Code, except those who manufacture phencyclidine, or who is convicted of an act which is punishable under subdivision (b) of Section 11379.6 of the Health and Safety Code, except those who offer to perform an act which aids in the manufacture of phencyclidine.

(4) Except as otherwise provided in Section 1203.07, any person who is convicted of violating Section 11353 or 11380 of the Health and Safety Code by using, soliciting, inducing, encouraging, or intimidating a minor to manufacture, compound, or sell heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 of the Health and Safety Code, or methamphetamine.

(5) Any person who is convicted of violating Section 11351.5 of the Health and Safety Code by possessing for sale 14.25 grams or more of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code, or a substance containing 14.25 grams or more of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code, or 57 grams or more of a substance containing at least five grams of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code.

(6) Any person who is convicted of violating Section 11352 of the Health and Safety Code by transporting for sale, importing for sale, or administering, or by offering to transport for sale, import for sale, or administer, or by attempting to import for sale or transport for sale, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code.

(7) Any person who is convicted of violating Section 11352 of the Health and Safety Code by selling or offering to sell cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054 of the Health and Safety Code.

(8) Any person convicted of violating Section 11379.6, 11382, or

11383 of the Health and Safety Code with respect to methamphetamine, if he or she has one or more prior convictions for a violation of Section 11378, 11379, 11379.6, 11380, 11382, or 11383 with respect to methamphetamine.

(c) As used in this section, the term "manufacture" refers to the act of any person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis.

(d) The existence of any previous conviction or fact which would make a person ineligible for probation under this section shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by the court siting without a jury.

CHAPTER 1558

An act to amend Section 36513 of, and to add Sections 25210.77g and 53082 to, and to repeal Section 60358 of, the Government Code, to amend Sections 6982, 13841, and 13845 of, and to add Section 13823.5 to, the Health and Safety Code, to amend Section 1463.10 of the Penal Code, to amend Section 5536 of the Public Resources Code, as amended by Chapter 322 of the Statutes of 1990, to amend Section 40087 of the Public Utilities Code, to amend Section 74950 of the Water Code, and to amend Section 203 of the Monterey Peninsula Water Management District Law, as amended by Chapter 319 of the Statutes of 1990, relating to local agencies.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 25210.77g is added to the Government Code, to read:

25210.77g. Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure applies to any judicial action or proceeding to validate, attack, review, set aside, void, or annul an ordinance or resolution adopted pursuant to this article and levying or fixing an assessment, charge, or fee or modifying or amending an existing ordinance or resolution.

If an ordinance or resolution provides for an automatic adjustment in an assessment, charge, or fee, and the automatic adjustment results in an increase in the amount of an assessment, charge, or fee, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 60 days of the effective date of the increase.

Any appeal from a final judgment in the action or proceeding brought pursuant to this section shall be filed within 30 days after entry of the judgment.

SEC. 2. Section 36513 of the Government Code is amended to read:

36513. (a) If a city councilmember is absent without permission from all regular city council meetings for 60 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy.

(b) Notwithstanding subdivision (a), if a city council meets monthly or less frequently than monthly and a city councilmember is absent without permission from all regular city council meetings for 70 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy.

SEC. 3. Section 53082 is added to the Government Code, to read:

53082. (a) By July 1, 1991, local agencies shall refund any sewer service fees collected for which no services were delivered.

(b) Any fees collected by a local agency from any person for which no service has been provided shall be refunded in accordance with subdivisions (c) and (d).

(c) In cases where a person paid fees as described in subdivision (a) and is still residing at the same location, it shall be the responsibility of the local agency to return fees in their entirety, regardless of the amount of time the fees were wrongly collected. For the purposes of this section, if the exact amount of the charges is not readily available, the amount of the refund may be calculated by averaging the rates paid by payers in the same classification during the time period in which the fees were collected.

(d) In cases where a person paid fees as described in subdivision (a) but is not still residing at the same location, the payer of the fees may make a claim for a refund to the agency collecting the fees. No statute of limitations as to those claims shall apply.

SEC. 3.7. Section 60358 of the Government Code is repealed.

SEC. 4. Section 6982 of the Health and Safety Code is amended to read:

6982. (a) Notwithstanding Section 6952, the West Bay Sanitary District may use the procedures in this chapter to provide alternative or innovative waste water technologies in the district's jurisdiction.

(b) The determination of a public health officer pursuant to Section 6955.1 shall include written findings, adopted by the district board of directors, regarding the existing or potential public health hazard.

(c) If the district uses the procedures in this chapter to provide alternative or innovative waste water technologies pursuant to this section, the district shall submit to the Legislature, by January 1, 1991, a report on the effectiveness of alternative waste water technologies and the procedures in this chapter, recommend changes, if any in the requirements, and make recommendations as to the desirability of

continuing the requirements after January 1, 1992.

(d) "Alternative or innovative waste water technologies" means either (1) an onsite waste water disposal system, as defined in Section 6952, or (2) such a system in conjunction with communitywide sewer or sewage systems, if one or more of the components of the system is located on or in close proximity to the real property and employs innovative or alternative waste water technologies, including, but not limited to, grinder pump pressure sewer systems, septic tank effluent pump pressure sewer systems, vacuum sewer systems, or small-diameter gravity septic tank systems.

(e) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

SEC. 5. Section 13823.5 is added to the Health and Safety Code, to read:

13823.5. After the local agency formation commission approves the formation of the district, notwithstanding Section 13823, if the board of supervisors finds that the petition filed with the executive officer of the local agency formation commission pursuant to Section 13819 has been signed by not less than 51 percent of the registered voters residing within the territory to be included within the proposed district, the board of supervisors may dispense with an election and adopt the resolution required pursuant to Section 13829. The initial members of the board of directors of the district shall be determined pursuant to Article 3 (commencing with Section 13834) of Chapter 3 of Part 3 of Division 12.

SEC. 6. Section 13841 of the Health and Safety Code is amended to read:

13841. Except in the case where a county board of supervisors has appointed itself as the district board, each member of a district board and each member of a fire commission appointed pursuant to Section 13844 shall be a resident of the district. In addition, if the district board is elected, each member of the district board shall be a registered voter of the district. In the case of a district board which is elected by divisions, each director shall be a registered voter of the division from which he or she is elected.

SEC. 6.5. Section 13845 of the Health and Safety Code is amended to read:

13845. (a) Except in the case where a county board of supervisors or a city council has appointed itself as the district board, the number of members of a district board may be increased or decreased if a majority of the voters voting on the question are in favor of the question at a general district or special election. The question shall specify the resulting number of members of the district board.

(b) The district board may adopt a resolution placing the question on the ballot. Alternatively, upon receipt of a petition signed by at least 25 percent of the registered voters of the district, the district

board shall adopt a resolution placing the question on the ballot.

(c) If the question is submitted to the voters at a general district election, the notice required by Section 23511 of the Elections Code shall contain a statement of the question to appear on the ballot. If the question is submitted to the voters at a special election, the notice of election and the ballot shall contain a statement of the question.

(d) If the voters approve of increasing the number of directors, the new members shall be elected or appointed pursuant to this chapter. If the district board is elected, the additional members may be elected at the same election.

(e) If the voters approve of decreasing the number of directors, the members of the district board continue to serve until the end of their current terms.

(f) The number of members of a district board may be changed by the local agency formation commission as a term and condition of approval by the commission of any change of organization or reorganization. Unless the Cortese-Knox Local Government Reorganization Act of 1985, Division 3 (commencing with Section 56000) of Title 5 of the Government Code, otherwise requires voter approval, the change ordered by the commission does not require approval by the voters of the district.

SEC. 7. Section 1463.10 of the Penal Code is amended to read:

1463.10. (a) Notwithstanding Section 1463, out of the moneys deposited with the county treasurer pursuant to Section 1463, there shall be credited, once a month, to any community service district for which the county treasurer is the depositary an amount equal to 86 percent of all fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested or notified by a member of the police department or fire department of the district, and an amount equal to the remaining 14 percent shall be transferred into the general fund of the county.

(b) Notwithstanding subdivision (a) or Section 1463, the Kensington Community Services District and the County of Contra Costa may, by mutual agreement, adjust the percentages of fines and forfeitures to be received by the district and county, respectively. In the absence of any agreement, the percentages fixed by subdivision (a) shall prevail.

SEC. 8. Section 5536 of the Public Resources Code, as amended by Chapter 322 of the Statutes of 1990, is amended to read:

5536. (a) The board shall establish rules for its proceedings.

(b) The board may provide, by ordinance or resolution, that each of its members may receive an amount not to exceed one hundred dollars ($100) per day for each attendance at a meeting of the board. For purposes of this section, a meeting of the board includes, but is not limited to, closed sessions of the board, board field trips, district public hearings, or meetings of a committee of the board. The maximum compensation allowable to a board member on any given day shall be one hundred dollars ($100). Board members shall not

receive any other compensation for meetings, and no board member shall receive more than five hundred dollars ($500) compensation under this section in any one calendar month, except that board members of the East Bay Regional Park District may receive compensation for not more than 10 days in any one calendar month. A board member may elect to waive the per diem. In addition, the board may provide, by ordinance or resolution, that each of its members not otherwise eligible for an employer-paid or partially employer-paid group medical or group dental plan, or both, may participate in any of those plans available to permanent employees of the district on the same terms available to those district employees or on terms and conditions as the board may determine. A board member who elects to participate in any plan may also elect to have the premium for the plan charged against his or her per diem and may further elect to waive the balance of the per diem.

(c) All vacancies on the board shall be filled in accordance with the requirements of Section 1780 of the Government Code, except that, in the case of vacancies caused by the creation of new wards or subdistricts, the directors shall, prior to the vacancies being filled, determine by lot, for the purpose of fixing the terms of the first directors to be elected to the wards or subdistricts, which ward or subdistrict shall have a four-year term and which ward or subdistrict shall have a two-year term. The persons who fill the vacancies caused by the establishment of new wards or subdistricts shall hold office until the next general election and until their successors are elected and qualified for the terms previously determined by lot.

SEC. 9. Section 40087 of the Public Utilities Code is amended to read:

40087. The board shall establish rules for its proceedings. The board may allow members of the board necessary traveling and personal expenses incurred in performance of duties authorized by the board and may allow members per diem compensation at the maximum rate of one hundred dollars ($100) per day, not to exceed five hundred dollars ($500) in any calendar month, for attending board meetings and for performance of any other services for the district as authorized by the board.

SEC. 10. Section 74950 of the Water Code is amended to read:

74950. The district may issue negotiable promissory notes bearing interest at a rate not exceeding the rate set by Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code. The notes shall be general obligations of the district payable from revenues and assessment taxes, unless paid from other available funds of the district, in the same manner as bonds of the district. The maturity of the notes shall not be later than five years from the date thereof and the total aggregate amount of the notes outstanding at any one time shall not exceed the lesser of 2 percent of the assessed valuation of the taxable property in the district, according to the last assessment roll or five million dollars ($5,000,000), except that a district which has been

formed for less than 18 months may not borrow an amount exceeding twenty-five thousand dollars ($25,000).

SEC. 11. Section 203 of the Monterey Peninsula Water Management District Law (Chapter 527 of the Statutes of 1977), as amended by Chapter 319 of the Statutes of 1990, is amended to read:

Sec. 203. Five members shall be elected by the qualified electors in the district. One member shall be a member of the board of supervisors of the county residing in the district, appointed by the board of supervisors, serving at the pleasure of the board of supervisors, and serving ex officio. One member shall be the mayor, member of the governing body, or chief executive officer of a city which is a member unit who shall be appointed by those members of the city selection committee of the county representing member units pursuant to the provisions of Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code, serving at the pleasure of the appointing power, and serving ex officio.

SEC. 12. Due to unique facts and circumstances applicable to the Kensington Community Services District and the County of Contra Costa, the Legislature finds and declares that, in enacting Section 7 of this act, a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. The unique facts and circumstances are as follows:

The Kensington Community Services District and the County of Contra Costa desire to negotiate a division of fines and forfeitures based on the unique circumstances found in that unincorporated community. Although state law permits cities and counties to negotiate the division of fines and forfeiture, there is no similar authority for special districts and counties. Section 7 of this act is necessary to permit the Kensington Community Services District and the County of Contra Costa to respond to their unique circumstances.

Special legislation is, therefore, necessary, applicable to only the Kensington Community Services District and the County of Contra Costa.

CHAPTER 1559

An act to add Section 653.1 to the Penal Code, relating to crimes.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 653.1 is added to the Penal Code, to read:

653.1. (a) No person shall sell or distribute any balloon which is constructed of electrically conductive material, and filled with a gas

lighter than air without:

(1) Affixing an object of sufficient weight to the balloon or its appurtenance to counter the lift capability of the balloon.

(2) Affixing a statement on the balloon, or ensuring that a statement is so affixed, that warns the consumer about the risk if the balloon comes in contact with electrical power lines.

(3) A printed identification of the manufacturer of the balloon.

(b) No person shall sell or distribute any balloon filled with a gas lighter than air, which is attached to an electrically conductive string, tether, streamer, or other electrically conductive appurtenance.

(c) No person shall sell or distribute any balloon which is constructed of electrically conductive material and filled with a gas lighter than air, which, is attached to another balloon constructed of electrically conductive material and filled with a gas lighter than air.

(d) No person or group shall release, outdoors, balloons made of electrically conductive material and filled with a gas lighter than air, as part of a public or civic event, promotional activity, or product advertisement.

(e) Any person who violates subdivision (a), (b), (c), or (d) shall be guilty of an infraction punishable by a fine not exceeding one hundred dollars ($100). Any person who violates subdivision (a), (b), (c), or (d) who has been previously convicted twice of violating subdivision (a), (b), (c), or (d) shall be guilty of a misdemeanor.

(f) This section shall not apply to manned hot air balloons, or to balloons used in governmental or scientific research projects.

(g) Electrical corporations shall report to the Public Utilities Commission every other month, from January 1, 1991, until June 30, 1993, on electrical service disruptions caused by balloons constructed of electrically conductive material, including, but not limited to, the location of the service disruption, the composition of the balloon, and the extent of the disruption. The commission shall provide a copy of each electrical corporation's bimonthly report to a representative designated by the metallic balloon manufacturers and shall report the following by December 31, 1993, to the Legislature:

(1) The number of outages reported by each electrical corporation on a monthly basis.

(2) A comparison of the monthly outages reported pursuant to Chapter 1122 of the Statutes of 1988, with the monthly outages reported by each electrical corporation pursuant to this act, reflecting the numerical trend of the outages.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1560

An act to amend Section 208 of the Penal Code, relating to kidnapping.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 208 of the Penal Code, as amended by Chapter 55 of the Statutes of 1990, is amended to read:

208. (a) Kidnapping is punishable by imprisonment in the state prison for three, five, or eight years.

(b) If the person kidnapped is under 14 years of age at the time of the commission of the crime, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years. This subdivision is not applicable to the taking, detaining, or concealing, of a minor child by a biological parent, a natural father, as specified in subdivision (a) of Section 7004 of the Civil Code, an adoptive parent, or a person who has been granted access to the minor child by a court order.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) If the person is kidnapped with the intent to commit rape, oral copulation, sodomy, or rape by instrument, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years.

CHAPTER 1561

An act to amend Section 437c of the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of this legislation to provide that all objections to the form and substance of the moving and opposing papers shall be first made in the trial court and not on appeal by the parties or by the appellate court and to expressly overrule the rules stated in Witchell v. De Korne, 179 Cal. App. 3d 965 and Zuckerman

v. Pacific Savings Bank, 187 Cal. App. 3d 1394.

It is also the intent of this legislation to stop the practice of adjudication of facts or adjudication of issues that do not completely dispose of a cause of action or a defense.

SEC. 2. Section 437c of the Code of Civil Procedure is amended to read:

437c. (a) Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense thereto. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at such earlier time after the general appearance as the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least 28 days before the time appointed for hearing. However, if the notice is served by mail, the required 28-day period of notice shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading.

(b) The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denial of the motion.

Any opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The opposition papers shall include a separate statement which responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts which the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.

Any reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.

Evidentiary objections not made at the hearing shall be deemed waived.

Section 1005 and subdivision (a) of Section 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section.

Any incorporation by reference of matter in the court's file shall set forth with specificity the exact matter to which reference is being made and shall not incorporate the entire file.

(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by any person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Any objections based on the failure to comply with the requirements of this subdivision shall be made at the hearing or shall be deemed waived.

(e) If a party is otherwise entitled to a summary judgment pursuant to this section, summary judgment shall not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court, where the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or where a material fact is an individual's state of mind, or lack thereof, and that fact is sought to be established solely by the individual's affirmation thereof.

(f) If it is contended that one or more causes of action within an action has no merit or that there is no defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs, any party may move for summary adjudication as to that cause or causes of action, that affirmative defense, that claim for damages, or that issue of duty. A cause of action has no merit if one or more of the elements of the cause of action, even if not separately pleaded, cannot be established.

A motion may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. However, a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances supporting the issues reasserted in the summary judgment motion.

(g) Upon the denial of a motion for summary judgment, on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion as to which the court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. Upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to, the motion which indicates that no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just.

(i) If the court determines at any time that any of the affidavits are presented in bad faith or solely for purposes of delay, the court shall order the party presenting the affidavits to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after an opportunity to be heard.

(j) Except where a separate judgment may properly be awarded in the action, no final judgment shall be entered on a motion for summary judgment prior to the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding herein provided for.

(k) In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

(*l*) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of any order pursuant to this section except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(m) Nothing in this section shall be construed to extend the period for trial provided by Section 1170.5.

(n) Subdivisions (a) and (b) shall not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

CHAPTER 1562

An act to amend Section 12978 of, and to add Section 985.6 to, the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 985.6 is added to the Insurance Code, to read:

985.6. The costs incurred in investigating and preparing the report required by Section 985.5 shall be an expense of administration within the meaning of paragraph (1) of subdivision (a) of Section 1033.

SEC. 2. Section 12978 of the Insurance Code is amended to read:

12978. Notwithstanding any other provision of law, the commissioner may increase or decrease the fees set forth in this code as necessary to allow the department to meet the appropriation authorized by the annual Budget Act. However, any increase or decrease so made shall be made only in accordance with this section.

Any increase or decrease in the statutory fees made by the department pursuant to this section shall be by a uniform percentage for all fees, rounded to the nearest whole dollar.

A single annual increase or decrease in fees, on a fiscal year basis, may be made by the department at any time during the year provided it is announced by bulletin issued at least 90 days prior to the effective date of that increase or decrease. The bulletin shall be

sent to all affected parties and to both houses of the Legislature. Any such fee increase or decrease may be rescinded by a majority vote of both houses of the Legislature not later than 60 days after the issuance of the bulletin announcing the increase or decrease.

In the event the bulletin is issued during the period between August 1 and December 1 of any year, the department shall provide notice in writing of the necessity of any fee increase or decrease as proposed in the bulletin upon issuance of the bulletin to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee.

If written notice is provided to the commissioner within 60 days of the issuance of the bulletin announcing the increase or decrease by any of the chairpersons that there is an objection to the fee increase or decrease, the increase or decrease shall take effect February 1 of the following year unless rescinded by a majority vote of both houses of the Legislature by that date, rather than 60 days after issuance of the bulletin.

The limit on the amount which the fees may be increased or decreased shall be the amount necessary to provide sufficient moneys to meet the appropriations contained in the Governor's Budget for the next succeeding fiscal year, or, to the extent that moneys received or projected to be received by the department are insufficient to meet the appropriation authorized by the annual Budget Act during the then current fiscal year, an amount necessary to meet that appropriation.

SEC. 3. If any provision of this act, or the application of that provision to any person or circumstance is held invalid, the remainder of this act and the application of that provision to any person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

CHAPTER 1563

An act to amend Sections 675, 3052, 8803, 11102, 11102.5, 11104, 11104.3, 11107, 11110, 11110.2, 11111, 11202, 11202.5, 11206, 11211, 11215, 11216, 11217, 11503, 11503.1, 11509, 11518, 11604, 11613, 11614, 11615, 11617, 11700, 11703, 11703.1, 11705, 11713, 11713.1, 11716, 11721, 11728, 11800, 11802, 11803, 11804, 11806, 11808, 11810, 11812, 11819, 11824, and 11902 of, to add Sections 234, 236, 11110.1, 11110.7, 11215.7, 11216.5, 11503.5, 11604.1, 11604.5, 11609.5, 11709.1, 11902.5, and 40000.77 to, to add Article 7 (commencing with Section 2570) to Chapter 2.5 of Division 2 of, to repeal Sections 350, 11116, 11221, and 24007.3 of, and to repeal Chapter 11 (commencing with Section 12200) of Division 5 of, the Vehicle Code, relating to occupational licensing.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 234 is added to the Vehicle Code, to read:

234. A "business" includes a proprietorship, partnership, corporation, and any other form of commercial enterprise.

SEC. 2. Section 236 is added to the Vehicle Code, to read:

236. A "business representative" means a proprietor, a limited or general partner, a managerial employee, a stockholder, a director, or an officer who is active in the management, direction, and control of that part of a business which is a licensed activity.

SEC. 3. Section 350 of the Vehicle Code is repealed:

SEC. 3.3. Section 675 of the Vehicle Code is amended to read:

675. (a) "Vehicle salesperson" is a person not otherwise expressly excluded by this section, who does one or a combination of the following:

(1) Is employed as a salesperson by a dealer, as defined in Section 285, or who, under any form of contract, agreement, or arrangement with a dealer, for commission, money, profit, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates, or attempts to negotiate, a sale, or exchange of an interest in a vehicle required to be registered under this code.

(2) Induces or attempts to induce any person to buy or exchange an interest in a vehicle required to be registered, and who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of the vehicle.

(3) Exercises managerial control over the business of a licensed vehicle dealer or who supervises vehicle salespersons employed by a licensed dealer, whether compensated by salary or commission, including, but not limited to, any person who is employed by the dealer as a general manager, assistant general manager, or sales manager, or any employee of a licensed vehicle dealer who negotiates with or induces a customer to enter into a security agreement or purchase agreement or purchase order for the sale of a vehicle on behalf of the licensed vehicle dealer.

(b) The term "vehicle salesperson" does not include any of the following:

(1) Representatives of insurance companies, finance companies, or public officials, who in the regular course of business, are required to dispose of or sell vehicles under a contractual right or obligation of the employer, or in the performance of an official duty, or under the authority of any court of law, if the sale is for the purpose of saving the seller from any loss or pursuant to the authority of a court of competent jurisdiction.

(2) Persons who are licensed as a manufacturer, remanufacturer, transporter, distributor, or representative.

(3) Persons exclusively employed in a bona fide business of exporting vehicles, or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States.

(4) Persons not engaged in the purchase or sale of vehicles as a business, disposing of vehicles acquired for their own use, or for use in their business when the vehicles have been so acquired and used in good faith, and not for the purpose of avoiding the provisions of this code.

(5) Persons regularly employed as salespersons by persons who are engaged in a business involving the purchase, sale, or exchange of boat trailers.

(6) Persons regularly employed as salespersons by persons who are engaged in a business activity which does not involve the purchase, sale, or exchange of vehicles, except incidentally in connection with the purchase, sale, or exchange of vehicles of a type not subject to registration under this code, boat trailers, or midget autos or racers advertised as being built exclusively for use by children.

(7) Persons licensed as a vehicle dealer under this code doing business as a sole ownership or member of a partnership or a stockholder and director of a corporation licensed as a vehicle dealer under this code. However, those persons shall engage in the activities of a salesperson, as defined in this section, exclusively on behalf of the sole ownership or partnership or corporation in which they own an interest or stock, and those persons owning stock shall be directors of the corporation; otherwise, they are vehicle salespersons and subject to Article 2 (commencing with Section 11800) of Chapter 4 of Division 5.

(8) Persons regularly employed as salespersons by a vehicle dealer authorized to do business in California under Section 11700.1 of the Vehicle Code.

SEC. 3.6. Article 7 (commencing with Section 2570) is added to Chapter 2.5 of Division 2 of the Vehicle Code, to read:

Article 7. Transportation of School Pupils

2570. It is the intent of the Legislature, in enacting this chapter, that the public be provided additional protection through the licensing of private schoolbus contractors transporting school pupils under contracts with school districts, and that the Department of the California Highway Patrol be authorized to inspect and license the contractors described in subdivision (a), giving special attention directed to negligent operators or repeat violators.

2571. Every private schoolbus contractor who contracts with a school district for the transportation of school pupils shall be licensed in accordance with regulations adopted by the commissioner. The license fee shall be one hundred dollars ($100) for an initial license and seventy-five dollars ($75) for each annual renewal.

2572. (a) The commissioner may adopt whatever regulations are

necessary to administer this chapter. The regulations shall be consistent with regulations regarding schoolbuses and schoolbus drivers adopted by the commissioner pursuant to other provisions of law.

(b) In addition to any other requirements, it is unlawful for the private schoolbus contractor or the person who directs the driver to operate a vehicle transporting school pupils, when that transportation requires a license, to knowingly cause the operation of the vehicle unless the private schoolbus contractor holds a valid license for the transportation of school pupils. A violation of this subdivision shall be punished by a fine of not more than two thousand dollars ($2,000).

2573. (a) The commissioner may temporarily suspend a license to transport school pupils under contract with a school district, subject to a hearing conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, when, in the commissioner's opinion, the action is necessary to prevent an imminent and substantial danger to the public health.

(b) The commissioner may, following a hearing, suspend a license to transport school pupils under contract with a school district, for a period of at least 30 days but not more than 90 days, if the holder of the license knowingly permits the transportation of school pupils by a person who does not possess the appropriate driver's license and driver's certificate.

(c) The suspensions authorized pursuant to subdivisions (a) and (b) may, at the discretion of the commissioner, be enforced for all operations of a schoolbus contractor, or for the operations of the contractor in the school district in which the alleged violations occurred, or for the operations of the contractor in the contractor's terminal in which the alleged violations occurred.

(d) The commissioner shall provide notification of a suspension hearing to those school districts whose terminals would be affected by the suspension.

2574. (a) All fees collected by the Department of the California Highway Patrol pursuant to the issuance or renewal of a license for the transportation of school pupils under contract with a school district shall be deposited in the Motor Vehicle Account of the State Transportation Fund.

(b) All moneys collected from these fees shall be used for the support of the licensing program of the department upon appropriation therefor by the Legislature.

2575. The Department of the California Highway Patrol shall submit a report to the Legislature on or before January 1, 1993, concerning the implementation of the licensing and inspection program under this chapter, including, but not limited to, the amount collected for license fees and the nature of the violations charged.

SEC. 4. Section 3052 of the Vehicle Code is amended to read:

3052. (a) On or before the 10th day after the last day on which reconsideration of a final decision of the department can be ordered, the respondent may file an appeal with the secretary of the board. The appeal shall be in writing and shall state the grounds therefor. A copy of the appeal shall be mailed by the appellant to the department which shall thereafter be considered in all respects as a party to the appeal. The right to appeal is not affected by failure to seek reconsideration before the department.

(b) An appeal is considered to be filed on the date it is received in the office of the secretary of the board, except that an appeal mailed to the secretary by means of registered mail is considered to be filed with the secretary on the postmark date.

(c) The appeal shall be accompanied by evidence that the appellant has requested the administrative record of the department and advanced the cost of preparation of that record. The complete administrative record includes the pleadings, all notices and orders issued by the department, any proposed decision by a hearing officer, the exhibits admitted or rejected, the written evidence, and any other papers in the case. All or those parts of the administrative record requested by the appellant may be filed with the appeal together with the appellant's points and authorities. If the board orders the filing of additional parts of the administrative record, the board may order prior payment by the appellant of the cost of providing those additional parts.

(d) Except as provided in subdivisions (e) and (f), no decision of the department shall become effective during the period an appeal may be filed, and the filing of an appeal shall stay the decision of the department until a final order is made by the board.

(e) When a decision has ordered revocation of a dealer's license, the department may, on or before the last day upon which an appeal may be filed with the board, petition the board to order the decision of the department into effect.

(f) With respect to the department's petition filed pursuant to subdivision (e), the department shall have the burden of proof. The board shall act upon the petition within 14 days or prior to the effective date of the department's decision, whichever is later. The board may order oral argument on the petition before the board. Oral argument by telephone conference call with a quorum of the board members present, either in person or by telephone, is permitted.

SEC. 5. Section 8803 of the Vehicle Code is amended to read:

8803. Whenever the department cancels, suspends, or revokes any license issued pursuant to Division 5 (commencing with Section 11100), the licensee or person in possession shall immediately return the license, documents, plates, certificates, and other evidence of the license to the department.

SEC. 6. Section 11102 of the Vehicle Code is amended to read:

11102. (a) A driving school owner, or the principal in an all-terrain vehicle safety training organization, shall meet all of the

following requirements:

(1) Maintain an established place of business open to the public. No office or place of business shall be situated within 500 feet of any building used by the department as an office, unless the owner was established at that location on or before January 1, 1976.

(2) Have the proper equipment necessary to give instruction in the operation of the class of vehicles for which the course is designed.

(3) Procure and file with the department a bond of two thousand dollars ($2,000) executed by an admitted surety insurer and conditioned that the applicant shall not practice any fraud or make any fraudulent representation which will cause a monetary loss to a person taking instruction from the applicant.

(4) Meet the requirements of Section 11105.2 and, if the person is the owner of a driving school, meet the requirements of Section 11102.5. If the owner is not the operator of the driving school, the owner shall designate an operator who shall meet the requirements of Section 11102.5.

(5) (A) File with the department an instrument, in writing, appointing the director as the agent of the applicant upon whom a process may be served in any action commenced against the applicant arising out of any claim for damages suffered by any person by the applicant's violation of any provision of this code or any condition of the bond.

(B) The applicant shall stipulate in the instrument that any process directed to the applicant, when personal service cannot be made in this state after due diligence, may be served upon the director or, if the director is absent from the office, upon any employee in charge of the office of the director, in which case the service is of the same effect as if served upon the applicant personally. The applicant shall further stipulate, in writing, that the agency created by the instrument shall continue during the period covered by the license and so long thereafter as the applicant may be made to answer in damages for a violation of this code or any condition of the bond.

(C) The instrument appointing the director as agent for the applicant for service of process shall be acknowledged by the applicant before a notary public.

(D) If the licensee is served with process by service upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars ($5) shall also be paid to the director at the time of service of the copy of the summons and complaint.

(E) The service on the director is a sufficient service on the licensee if the plaintiff or the plaintiff's attorney also, on the same day, sends notice of the service and a copy of the summons and complaint by registered mail to the licensee. A copy of the summons and complaint shall also be mailed by the plaintiff or his or her attorney to the surety of the applicant's bond at the address of the

surety given in the bond, postpaid and registered with request for return receipt.

(F) The director shall keep a record of all process served upon the director under this paragraph showing the day and hour of service, and the director shall retain the summons and complaint served on file.

(G) If the licensee is served with process by service thereof upon the director, the licensee has 30 days after that service within which to answer any complaint or other pleading filed in the cause. For purposes of venue, if the licensee is served with process by service upon the director, the service is deemed to have been made upon the licensee in the county in which the licensee has or last had the licensee's established place of business.

(b) The qualifying requirements referred to in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

SEC. 7. Section 11102.5 of the Vehicle Code is amended to read:

11102.5. (a) A driving school operator shall meet all of the following requirements:

(1) Within three attempts, pass an examination that the department requires on traffic laws, safe driving practices, operation of motor vehicles, teaching methods and techniques, driving school statutes and regulations, and office procedures and recordkeeping.

(2) Pay the department a fee of one hundred dollars ($100), which shall entitle the applicant to three examinations.

(3) Be 18 years of age or older.

(4) Have worked for an established licensed California driving school as a driving instructor for a period of not less than 1,000 hours of actual behind-the-wheel teaching and, on and after July 1, 1973, have satisfactorily completed a course in the teaching of driver education and driver training acceptable to the department, except that the operator, including an owner who is also the operator, of a driving school which exclusively teaches motorcycle driving may, in lieu of the behind-the-wheel teaching requirement, have worked for an established licensed California driving school as a motorcycle driving instructor for not less than 300 hours of actual motorcycle range and street teaching, have taught 300 hours of actual motorcycle range and street instruction under the guidance of the Motorcycle Safety Foundation, or have given comparable training instruction which is acceptable to the department. This paragraph does not apply to any person who is certified by the State Department of Education as fully qualified to teach driver education and driver training and has taught those subjects in the public school system for not less than 1,000 hours.

(b) The qualifying requirements referred to in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

SEC. 8. Section 11104 of the Vehicle Code is amended to read:

11104. (a) Every person, in order to qualify as a driving

instructor, as defined in Section 310.4, shall meet all of the following requirements:

(1) On and after July 1, 1973, have a high school education or its equivalent and have satisfactorily completed a course in the teaching of driver education and driver training acceptable to the department.

(2) Within three attempts, pass an examination that the department requires on traffic laws, safe driving practices, operation of motor vehicles, and teaching methods and techniques.

(3) Be physically able to safely operate a motor vehicle and to train others in the operation of motor vehicles.

(4) Hold a valid California driver's license in a class appropriate for the type of vehicle in which instruction will be given.

(5) Not be on probation to the department as a negligent operator.

(6) Have a driver record which does not have an outstanding notice for violating a written promise to appear in court or for willfully failing to pay a lawfully imposed fine, as provided in Section 40509.

(7) Be 18 years of age or older.

(b) The qualifying requirements referred to in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

SEC. 9. Section 11104.3 of the Vehicle Code is amended to read:

11104.3. (a) An all-terrain vehicle safety instructor shall meet all of the following requirements:

(1) Be a person who has not been convicted of a crime involving an act of dishonesty, fraud, or deceit with the intent to benefit himself or herself or another substantially, or to injure another substantially; or has not committed any act which, if done as an all-terrain vehicle safety instructor, would be grounds for the suspension or revocation of the all-terrain vehicle safety instructor's license. A conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this section.

(2) Have a high school education or its equivalent and have satisfactorily completed a course of instruction training in all-terrain vehicle safety as approved by the Off-Highway Vehicle Safety Education Committee.

(3) Within three attempts, pass the examination that the department requires on off-highway vehicle laws, safe driving practices, operation of all-terrain vehicles, and teaching methods and techniques.

(4) Be physically able to safely operate a motor vehicle and to train others in the operation of all-terrain vehicles.

(5) Hold a valid driver's license issued by this state or any contiguous state.

(6) Not be on probation to the department as a negligent operator or the equivalent of that in the state that issued the driver's license.

(7) Have a driver record which does not have an outstanding

notice for violating a written promise to appear in court or for willfully failing to pay a lawfully imposed fine, as provided in Section 40509 or 40509.5 or as provided in equivalent statutes in the state that issued the driver's license.

(8) Be 18 years of age or older.

(9) Be sponsored by an all-terrain vehicle safety training organization.

(b) The qualifying requirements in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

SEC. 10. Section 11107 of the Vehicle Code is amended to read:

11107. (a) The department may refuse to issue a license certificate under this chapter to any applicant to own or operate a school or to any instructor when it finds and determines any of the following to exist:

(1) The applicant has not met the qualifications required under this chapter.

(2) The applicant was previously the holder of a license under this chapter which was revoked or suspended, which was never reissued by the department after revocation, or which was never reinstated after suspension.

(3) The applicant has done any act or series of acts which would be a cause for suspension or revocation under Section 11110.

(4) If the applicant is a business, a business representative was the holder of a revoked or suspended license previously issued under this chapter which was never reissued after revocation or which was never reinstated after suspension, or a business representative, though not previously the holder of a license, has done any act or series of acts which would be a cause for revocation or suspension under Section 11110.

(5) By reason of the facts and circumstances relating to the organization, control, and management of the business, it is likely that the policy or operation of the business will be directed, controlled, or managed by a business representative who, by reason of any act, series of acts, or conduct described in paragraph (3) or (4), would be ineligible for a license and that, by licensing the business, the purposes of this division would be defeated.

(6) The applicant has knowingly made a false statement or knowingly concealed a material fact in applying for a license.

(7) The applicant, or one of the business representatives if the applicant is a business, has been convicted of a crime, or has committed any act or engaged in conduct involving moral turpitude, which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) Upon refusal of the department to issue a license, the applicant may demand, in writing, a hearing before the director or the director's representative within 60 days after notice of refusal. The hearing shall be conducted pursuant to Chapter 5

(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A person whose license has been revoked, or whose application for a license has been refused, may reapply for the license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or refusing the application.

SEC. 11. Section 11110 of the Vehicle Code is amended to read:

11110. The department, after notice and hearing, may suspend or revoke any license issued under this chapter in any of the following cases:

(a) The department finds and determines that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(b) The licensee fails to keep the records required by this chapter.

(c) The licensee permits fraud or engages in fraudulent practices either with reference to the applicant for a driver's license or an all-terrain vehicle safety certificate or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant.

(d) The licensee fails to comply with any provision of this chapter or regulation or requirement of the department adopted pursuant thereto.

(e) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or which would reasonably have the effect of leading persons to believe, that the licensee was in fact an employee or representative of the department; or the licensee makes an advertisement, in any manner or by any means, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(f) The licensee, or any employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(g) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this section.

(h) The licensee teaches, or permits a student to be taught, the specific tests administered by the department through use of the department's forms or testing facilities.

(i) The licensee conducts training, or permits training by any employee, in an unsafe manner or contrary to safe driving practices.

(j) The licensed school owner or licensed driving school operator teaches, or permits an employee to teach, driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(k) The licensed school owner does not have in effect a bond as required by Section 11102.

(*l*) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

SEC. 12. Section 11110.1 is added to the Vehicle Code, to read:

11110.1. Any of the causes specified in this chapter as a cause for refusal to issue a license under this chapter is cause to suspend or revoke a license under this chapter.

SEC. 13. Section 11110.2 of the Vehicle Code is amended to read:

11110.2. The license issued to a school owner shall be automatically canceled upon the happening of any of the following:

(a) The abandonment of the established place of business or the change thereof without notice to the department pursuant to Section 11108.5.

(b) The failure to maintain an adequate bond or to procure and file another bond, as required by Section 11102, prior to the effective date of the termination by the surety of any existing bond.

(c) The voluntary or involuntary surrender of the license, except that a surrender or cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee, does not preclude the department from filing an accusation for revocation or suspension of the surrendered license, as provided in Section 11110, or affect the department's decision to suspend or revoke the license.

(d) Notification to the department that the person designated as licensee has changed.

(e) Suspension or revocation of the corporate status of the licensee.

SEC. 14. Section 11110.7 is added to the Vehicle Code, to read:

11110.7. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee, or a business representative if the applicant or licensee is a business, has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or otherwise becomes final, the refusal to issue or the suspension shall automatically become effective as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or the suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall also be stayed under the same terms and conditions for a term not to exceed the original term of probation for the interim refusal to issue or suspension.

(c) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the

department shall set aside immediately that refusal or suspension.

SEC. 15. Section 11111 of the Vehicle Code is amended to read:

11111. (a) Every licensee under this chapter is entitled to notice and hearing prior to cancellation, suspension, or revocation of the license by the department, except that the department shall immediately cancel the license without a hearing for failure of the licensee to meet and maintain the requirements of paragraph (1), (3), or (4) of subdivision (a) of Section 11102, or Section 11103 or 11103.1, or paragraph (4), (5), or (6) of subdivision (a) of Section 11104, or paragraph (4), (5), or (6) of subdivision (a) of Section 11104.3, or Section 11110.2.

(b) The notice and hearings provided for in this chapter shall be pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Any action of the department in suspending, canceling, or revoking, or failing to renew a license may be reviewed by any court of competent jurisdiction.

(d) The department may, pending a hearing, temporarily suspend the license or permit of any person licensed under this chapter for not more than 30 days if the director finds that the action is required in the public interest. In that case, a hearing shall be held and a decision issued within 30 days after notice of the temporary suspension.

(e) The suspension, expiration, or cancellation of a license issued under this chapter does not preclude the filing of an accusation for the revocation or suspension of the suspended, expired, or canceled license as provided in Section 11110, and does not invalidate or otherwise preclude a decision by the department to suspend or revoke the license. That determination may be considered in granting or refusing to grant any subsequent license authorized by this chapter to the same licensee, or to any partner, officer, director, or stockholder of the same licensee.

SEC. 16. Section 11116 of the Vehicle Code is repealed.

SEC. 17. Section 11202 of the Vehicle Code is amended to read:

11202. (a) Except as provided in subdivision (c), a traffic violator school owner shall meet all of the following criteria before a license may be issued for the traffic violator school:

(1) Maintain an established place of business in this state which is open to the public. No office or place of business of a traffic violator school, including any traffic violator school branch or classroom location, may be situated within 500 feet of any building used by the department as an office, or any court of law, unless the owner was established at the location on or before July 1, 1984.

(2) Conform to standards established by regulation of the department. In adopting the standards, the department shall consider those practices and instructional programs which may reasonably foster the knowledge, skills, and judgment necessary for compliance with traffic laws. The standards may include, but are not limited to, school personnel, equipment, curriculum, procedures for

the testing and evaluation of students, recordkeeping, and business practices.

(3) Procure and file with the department a bond of two thousand dollars ($2,000) executed by an admitted surety and conditioned upon the applicant not practicing any fraud or making any fraudulent representation which will cause a monetary loss to a person taking instruction from the applicant or to the state or any local authority.

(4) Have a classroom approved by the department and the proper equipment necessary for giving instruction to traffic violators.

(5) Have a lesson plan approved by the department and provide not less than the minimum instructional time specified in the plan. An approved lesson plan shall provide a minimum of 400 minutes of instruction, except that a lesson plan for instructing persons under the age of 18 may provide a minimum of 600 minutes of instruction.

(6) (A) Execute and file with the department an instrument designating the director as agent of the applicant for service of process, as provided in this paragraph, in any action commenced against the applicant arising out of any claim for damages suffered by any person by the applicant's violation of any provision of this code committed in relation to the specifications of the applicant's traffic violator school or any condition of the bond required by paragraph (3).

(B) The applicant shall stipulate in the instrument that any process directed to the applicant, when personal service cannot be made in this state after due diligence, may be served instead upon the director or, in the director's absence from the department's principal offices, upon any employee in charge of the office of the director, and this substituted service is of the same effect as personal service on the applicant. The instrument shall further stipulate that the agency created by the designation shall continue during the period covered by the license issued pursuant to this section and so long thereafter as the applicant may be made to answer in damages for a violation of this code for which the surety may be made liable or any condition of the bond.

(C) The instrument designating the director as agent for service of process shall be acknowledged by the applicant before a notary public.

(D) If the director or an employee of the department, in lieu of the director, is served with a summons and complaint on behalf of the licensee, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars ($5) shall also be paid to the director or employee at the time of service of the copy of the summons and complaint, or shall be included with a summons and complaint served by mail.

(E) The service on the director or department employee pursuant to this paragraph is sufficient service on the licensee if a notice of the service and a copy of the summons and complaint is, on

the same day as the service or mailing of the summons and complaint, sent by registered mail by the plaintiff or his or her attorney to the licensee. A copy of the summons and complaint shall also be mailed by the plaintiff or plaintiff's attorney to the surety on the licensee's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt.

(F) The director shall keep a record of all processes served pursuant to this paragraph showing the day and hour of service, and shall retain the documents served in the department's files.

(G) If the licensee is served with process by service upon the director or a department employee in lieu of the director, the licensee has 30 days after that service within which to answer any complaint or other pleading filed in the cause. For purposes of venue, if the licensee is served with process by service upon the director or a department employee in lieu of the director, the service is considered to have been made upon the licensee in the county in which the licensee has or last had his or her established place of business.

(7) Meet the requirements of Section 11202.5 and subdivision (b) of Section 11208, relating to traffic violator school operators, if the owner is also the operator of the traffic violator school. If the owner is not the operator of the traffic violator school, the owner shall designate an operator who shall meet the requirements of Section 11202.5.

(b) The qualifying requirements specified in subdivision (a) shall be met within one year from the date of application for a license, or a new application and fee is required.

(c) Paragraphs (3) and (6) of subdivision (a) do not apply to public schools or other public agencies, which shall also not be required to post a cash deposit pursuant to Section 11203.

(d) Paragraph (7) of subdivision (a) does not apply to public schools or other public educational institutions.

(e) A notice approved by the department shall be posted in every traffic violator school, branch, and classroom location stating that any person involved in the offering of, or soliciting for, a completion certificate for attendance at a traffic violator school program in which the person does not attend or does not complete the minimum amount of instruction time provided by subdivision (a) may be guilty of violating Section 134 of the Penal Code.

SEC. 18. Section 11202.5 of the Vehicle Code is amended to read:

11202.5. (a) The department shall license traffic violator school operators. No person shall act as a traffic violator school operator without a currently valid license issued by the department. Every person, in order to qualify as a traffic violator school operator, shall meet all of the following criteria in order to be issued a traffic violator school operator's license:

(1) Have not committed any act which, if the applicant were licensed as a traffic violator school operator, would be grounds for suspension or revocation of the license.

(2) Within three attempts, pass an examination that the department requires on traffic laws, safe driving practices, operation of motor vehicles, teaching methods and techniques, traffic violator school statutes and regulations, and office procedures and recordkeeping.

(3) Be 18 years of age or older.

(4) Have worked for an established California traffic violator school as an instructor for a period of not less than 500 hours of actual in-class instruction.

(b) Paragraph (4) of subdivision (a) does not apply to a traffic violator school operator validly licensed prior to January 1, 1987.

(c) All the qualifying requirements specified in this section shall be met within one year from the date of application for the license or the application shall lapse. However, the applicant may thereafter submit a new application upon payment of the required fee.

SEC. 19. Section 11206 of the Vehicle Code is amended to read:

11206. (a) The department shall license traffic violator school instructors. Except as exempted by this section, no person shall act as a traffic violator school instructor without a currently valid instructor's license issued by the department. Every person, in order to qualify as a traffic violator school instructor, shall meet all of the following requirements before an instructor's license may be issued:

(1) Have a high school education.

(2) Within three attempts, pass an examination, as required by the department, on traffic laws, safe driving practices, operation of motor vehicles, and teaching methods and techniques.

(3) Hold a currently valid California driver's license, which is not subject to probation pursuant to Section 14250 due to the applicant being a negligent operator within the meaning of Section 12810 or 12810.5. The applicant's driving record shall not have any outstanding notice for violating a written promise to appear in court or for willfully failing to pay a lawfully imposed fine, as provided in Section 40509.

(4) Be 18 years of age or older.

(b) All the qualifying requirements specified by this section shall be met within one year from the date of application for a license or the application shall lapse. However, the applicant may thereafter submit a new application upon payment of the requisite fee.

(c) A license issued pursuant to this section is not required to provide instruction to traffic violators in a public school or other public educational institution by a person holding a valid teaching credential with satisfactory training or experience in the subject area, as determined by the department. Persons exempt from licensure under this section are not required to obtain a license certificate pursuant to Section 11207.

SEC. 20. Section 11211 of the Vehicle Code is amended to read:

11211. (a) The department may refuse to issue a license to any applicant under this chapter when it finds and determines that any of the following exist:

(1) The applicant was previously the holder of a license under this chapter which was revoked or suspended.

(2) The applicant has done any act or series of acts which would be a cause for suspension or revocation of licensure under Section 11215, regardless of whether the applicant was licensed under this chapter at the time of the act or acts.

(3) If the applicant is a business, a business representative was the holder of a previously issued license under this chapter that was suspended or revoked or has done any act or series of acts which would be a cause for suspension or revocation of a license under Section 11215, regardless of whether the business representative was licensed under this chapter at the time of the act or acts.

(4) By reason of the facts and circumstances relating to the organization, control, and management of the business, it is likely that both of the following will occur:

(A) The policy or operation of the business will be directed, controlled, or managed by an individual who, by reason of an act, series of acts, or conduct described in paragraph (2) or (3), would be ineligible for a license.

(B) By licensing the business, the purposes of this division would be defeated.

(5) The applicant has knowingly made a false statement or knowingly concealed a material fact in applying for a license under this chapter.

(6) The applicant, or a business representative if the applicant is a business, has been convicted of a crime, or committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) Upon refusal of the department to issue a license under this chapter, the applicant is entitled to a hearing upon demand in writing submitted to the department within 60 days after notice of refusal. The hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A person whose license has been revoked or application for a license has been refused may reapply for the license after a period of not less than one year has elapsed from the effective date of the decision revoking the license or refusing the application.

SEC. 21. Section 11215 of the Vehicle Code is amended to read:

11215. The department, after notice and hearing, may suspend or revoke any license issued under this chapter if any of the following circumstances exist:

(a) The department finds and determines that the licensee ceases to meet any requirement to obtain a license under this chapter.

(b) The holder fails to comply with, or otherwise violates, any provision of this chapter or any regulation or requirement of the department adopted pursuant to this chapter.

(c) The licensee engages in fraudulent practices with respect to its activities licensed under this chapter or induces or fails to promptly report to the department any known fraud or fraudulent practices on the part of any employee of the traffic violator school.

(d) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or which would reasonably have the effect of leading persons to believe that the licensee was in fact an employee or representative of the department, or whenever the licensee advertises, in any manner or means any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(e) The licensee or any employee or agent of the licensee collects fees for or preregisters any person in traffic violator school or solicits traffic violator school instruction in an office of the department or in any court or within 500 feet of any office of the department or any court.

(f) The licensee is convicted of violating Section 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or Section 192 of the Penal Code. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(g) The traffic violator school owner teaches, or permits an employee to teach, traffic safety instruction without a valid instructor's license.

(h) The traffic violator school owner does not have in effect a bond as provided in paragraph (3) of subdivision (a) of Section 11202 or a deposit in lieu of the bond, as specified in Section 11203.

SEC. 22. Section 11215.7 is added to the Vehicle Code, to read:

11215.7. Any of the causes specified in this chapter as a cause for refusal to issue a license under this chapter is cause to suspend or revoke a license under this chapter.

SEC. 23. Section 11216 of the Vehicle Code is amended to read:

11216. Any license issued to a traffic violator school owner under this chapter shall be automatically canceled upon the happening of any of the following:

(a) The abandonment of the established place of business or the change thereof without notice to the department pursuant to Section 11213.

(b) The failure to maintain an adequate bond or to procure and file another bond, as required by Section 11202, prior to the effective date of the termination by the surety of any existing bond.

(c) The voluntary or involuntary surrender of the license, except that a surrender or cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee, does not preclude the department from filing an accusation for revocation or suspension of the surrendered license, as provided in Section 11215 or 11215.5, or affect the department's decision to suspend or revoke the license.

(d) Notification to the department that the person designated as

the licensee has changed.

(e) Suspension or cancellation of the corporate status of the licensee.

SEC. 24. Section 11216.5 is added to the Vehicle Code, to read:

11216.5. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee, or a business representative if the applicant or licensee is a business, has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) If a conviction, on which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or otherwise becomes final, the refusal to issue or the suspension shall automatically take effect as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall also be stayed under the same terms and conditions for a term not to exceed the original term of probation for the interim refusal to issue or suspension.

(c) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the refusal or suspension shall be set aside immediately by the department.

SEC. 25. Section 11217 of the Vehicle Code is amended to read:

11217. (a) Every licensee under this chapter is entitled to notice and hearing prior to suspension or revocation of the license by the department, except that the department shall immediately suspend the license pursuant to subdivision (e) for any act of fraud specified in subdivision (c) or (d) of Section 11215.

(b) Before reinstatement of any license suspended pursuant to subdivision (a) of Section 11215, the licensee shall pay the department a reinstatement fee of five dollars ($5).

(c) The notice and hearings provided for in this division shall be pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Any action of the department, in suspending, canceling, revoking, or failing to renew a license issued pursuant to this chapter, may be reviewed by any court of competent jurisdiction.

(e) The department may, pending a hearing, temporarily suspend the license or permit of any traffic violator school owner, operator, or instructor for a period of not more than 30 days if the director finds that the public interest so requires. In that case, a hearing shall be held and a decision issued within 30 days after issuance of the notice of temporary suspension.

(f) The suspension, expiration, or cancellation of a license issued pursuant to this chapter does not preclude the filing of an accusation

for the revocation or suspension of the suspended, expired, or canceled license, and does not invalidate or otherwise preclude a decision by the department to suspend or revoke the license, and this determination may be considered by the department in granting or refusing to grant any subsequent license under this chapter to the same licensee or to any business representative of the same licensee.

SEC. 26. Section 11221 of the Vehicle Code is repealed.

SEC. 27. Section 11503 of the Vehicle Code is amended to read:

11503. The department may refuse to issue a license to an applicant when it determines any of the following:

(a) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this chapter which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(b) The applicant was previously a business representative whose license issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(c) If the applicant is a business, a business representative was previously the holder of a license, or was a business representative of a business whose license, issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of this code, would be ineligible for a license and, by licensing that business, the purposes of this chapter would be defeated.

(d) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or has committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(e) The information contained in an application is incorrect.

(f) A decision of the department to cancel, suspend, or revoke a license has been made, and the applicant was a business representative of the business regulated under that license.

SEC. 28. Section 11503.1 of the Vehicle Code is amended to read:

11503.1. Any of the causes specified in this chapter as a cause to suspend or revoke the license issued to an automobile dismantler is cause to refuse to issue a license to an automobile dismantler.

SEC. 29. Section 11503.5 is added to the Vehicle Code, to read:

11503.5. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee, or a business representative if the applicant or licensee is a business, has been

convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) When a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or otherwise becomes final, the refusal to issue or suspension shall automatically take effect as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall also be stayed under the same terms and conditions for a term not to exceed the original term of probation for the interim refusal or suspension.

(c) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the refusal or suspension shall be set aside immediately by the department.

SEC. 30. Section 11509 of the Vehicle Code is amended to read:

11509. (a) The department, after notice and hearing, may suspend or revoke the license issued to an automobile dismantler upon the determination that the person to whom the license was issued is not lawfully entitled thereto or has done any of the following:

(1) Made or knowingly or negligently permitted any illegal use of the special plates issued to him or her.

(2) Used a false or fictitious name or knowingly made any false statement or concealed any material fact in any application or other document filed with the department.

(3) Failed to provide and maintain a clear physical division between the type of business licensed pursuant to this chapter and any other type of business conducted at the established place of business.

(4) Violated any provision of Division 3 (commencing with Section 4000) or any rule or regulation adopted pursuant thereto.

(5) Violated any provision of Division 4 (commencing with Section 10500) or any rule or regulation adopted pursuant thereto.

(6) Violated any provision of this chapter, except Section 11520, or any rule or regulation adopted pursuant thereto.

(7) Knowingly, repeatedly, or flagrantly violated Section 11520.

(8) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

(9) Purchased, concealed, possessed, or otherwise acquired or disposed of a vehicle, or a part thereof, knowing it to be stolen.

(10) Failed to meet and maintain the requirements for the issuance of an automobile dismantler's license as provided in this code.

(11) Failed to pay, within 30 days after written demand from the

department, any fees or penalties due on vehicles acquired for dismantling which are not the subject of dispute. If the dismantler disputes the validity of the fees or penalties, the 30-day period shall not commence until the department, after review, has determined the fee or penalty to be due.

(12) Submitted a check, draft, or money order to the department for any obligation or fees due the state, and it is thereafter dishonored or refused payment upon presentation.

(13) Failed to meet the terms and conditions of a previous agreement entered into pursuant to Section 11509.1.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to an automobile dismantler applicant is cause, after notice and hearing, to suspend or revoke a license and special plates issued to an automobile dismantler.

(c) Except as provided in Section 11509.1, every hearing provided for in this chapter shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 31. Section 11518 of the Vehicle Code is amended to read:

11518. The special plates and license provided for in this chapter shall be automatically canceled if any of the following occurs:

(a) The abandonment of the established place of business of the automobile dismantler or the change thereof without notice to the department pursuant to Section 11513.

(b) The voluntary or involuntary surrender for any cause by the licensee of the special plates and license, except that a surrender of the special plates and license, the cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee, does not preclude the filing of an accusation for revocation or suspension of the surrendered license as provided in Section 11509, and does not affect the department's decision to suspend or revoke the license. The department's decision to suspend or revoke the license may be considered in issuing or refusing to issue any subsequent license authorized by this division to that licensee or any business representative of that licensee.

(c) When the person designated as the licensee has changed, except that the special plates issued to the original licensee may be transferred upon application as provided in Section 11501 and the newly designated licensee, as transferee, shall succeed to the privileges evidenced by the plates until their expiration.

(d) The suspension or revocation of the corporate status of the licensee.

(e) The suspension or revocation of the seller's permit of the licensee by the State Board of Equalization.

SEC. 32. Section 11604 of the Vehicle Code is amended to read:

11604. (a) The department may refuse to issue a lessor-retailer license when it makes any of the following determinations:

(1) The applicant has outstanding an unsatisfied final court judgment rendered in connection with an activity licensed under the

authority of this division.

(2) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this division which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(3) The applicant was previously a business representative whose license issued under this division was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(4) If the applicant is a business, a business representative was previously the holder of a license, or was a business representative of a business whose license, issued under this division, was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of this code, would be ineligible for a license and, by licensing that business, the purposes of this chapter would be defeated.

(5) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed any act or engaged in conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(6) The information contained in the application is incorrect.

(7) A decision of the department to cancel, suspend, or revoke a license has been made, and the applicant was a business representative of the business regulated under that license.

(8) The applicant does not have a principal place of business in California.

SEC. 33. Section 11604.1 is added to the Vehicle Code, to read:

11604.1. Any cause specified in this chapter as a cause to suspend or revoke the license issued to a lessor-retailer is a cause to refuse to issue a license to a lessor-retailer.

SEC. 34. Section 11604.5 is added to the Vehicle Code, to read:

11604.5. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee, or a business representative if the applicant or licensee is a business, has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) When a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or

otherwise becomes final, the refusal to issue or suspension shall automatically take effect as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall also be stayed under the same terms and conditions for a term not to exceed the original term of probation for the interim refusal to issue or suspension.

(c) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the refusal or suspension shall be set aside immediately by the department.

SEC. 35. Section 11609.5 is added to the Vehicle Code, to read:

11609.5. Every lessor-retailer who displays or offers one or more used vehicles for sale at retail shall post a notice not less than 8 inches high and 10 inches wide, in a place conspicuous to the public, which states the following:

"The prospective purchaser of a vehicle may, at his or her own expense and with the approval of the lessor-retailer, have the vehicle inspected by an independent third party either on or off these premises."

SEC. 36. Section 11613 of the Vehicle Code is amended to read:

11613. (a) The department, after notice and hearing, may suspend or revoke the license issued to a lessor-retailer upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has done any of the following:

(1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made any false statement or knowingly concealed any material fact, in the application for the license.

(2) Used a false or fictitious name, knowingly made any false statement or knowingly concealed any material fact in any application for the registration of a vehicle, or otherwise committed a fraud in the application.

(3) Knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle.

(4) Violated any provision of Division 3 (commencing with Section 4000) or rule or regulation adopted pursuant thereto.

(5) Violated any provision of Division 4 (commencing with Section 10500) or rule or regulation adopted pursuant thereto.

(6) Violated any provision of this chapter or rule or regulation adopted pursuant thereto.

(7) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or rule or regulation adopted pursuant thereto under the authority of Section 1651.

(8) Submitted a check, draft, or money order to the department for any obligation or fee due the state which was thereafter dishonored or refused payment upon presentation.

(9) Caused any person to suffer any loss or damage by reason of

any fraud or deceit practiced on, or fraudulent representations made to, that person in the sale of a vehicle or parts or accessories thereof.

For purposes of this subdivision, "fraud" includes any act or omission which is included within the definition of either "actual fraud" or "constructive fraud" as defined in Sections 1572 and 1573 of the Civil Code, and "deceit" has the same meaning as defined in Section 1710 of the Civil Code. In addition, "fraud" and "deceit" include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this subdivision, "person" also includes a governmental entity.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a lessor-retailer applicant is cause to suspend or revoke a license issued to a lessor-retailer.

(c) Every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 36.5. Section 11614 of the Vehicle Code is amended to read:

11614. It is unlawful and a violation of this code for a lessor-retailer licensed under this chapter in connection with any activity for which this license is required:

(a) To make or disseminate or cause to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by oral representation, or in any other manner or means whatever, any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate or cause to be so disseminated any statement as part of a plan or scheme with the intent not to sell any vehicle or sell service so advertised at the price stated therein, or as so advertised.

(b) To advertise or offer for sale in any manner, any vehicle not actually for sale at the premises of the lessor-retailer or available within a reasonable time to the lessor-retailer at the time of the advertisement or offer.

(c) To fail within 48 hours to give, in writing, notification to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) To advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(e) To advertise the total price of a vehicle without including all costs to the purchaser at the time of delivery at the lessor-retailer's premises, except sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute, and any dealer

documentary preparation charge. The dealer documentary charge shall not exceed thirty-five dollars ($35).

(f) To exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, or any dealer documentary preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(g) To advertise or otherwise represent, or knowingly to allow to be advertised or represented on the lessor-retailer's behalf or at the lessor-retailer's place of business, that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(h) To refuse to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance pursuant to any statute and any dealer documentary preparation charge, which charges shall not exceed thirty-five dollars ($35) for the documentary preparation charge and twenty-five dollars ($25) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold or unleased unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(i) To engage in the business for which licensee is licensed without having in force and effect a bond as provided in Section 11612.

(j) To engage in the business for which the lessor-retailer is licensed without at all times maintaining a principal place of business and a branch office location or locations as required by this chapter.

(k) To permit the use of the lessor-retailer license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the lessor-retailer license, supplies, or books to operate a branch office location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the vehicles sold by, or the business of, or branch office location used by, the person, or has no interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the lessor-retailer license, supplies, or books to engage in the sale of vehicles.

(*l*) To violate any of the provisions of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(m) To represent the dealer documentary preparation charge, or certificate of compliance or noncompliance fee, as a governmental

fee.

(n) To display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

SEC. 36.7. Section 11615 of the Vehicle Code is amended to read:

11615. It shall be unlawful and a violation of this code for a lessor-retailer licensed under this chapter when selling at retail a vehicle in a transaction for which this license is required:

(a) To deliver, following sale, a vehicle for operation on California highways, if such vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000) of this code.

(b) To fail to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.

(c) To violate any of the terms or provisions of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or rules and regulations adopted pursuant thereto or adopted pursuant to Section 1651 of this code.

(d) To take a vehicle in trade in part or total payment for a vehicle sold by the lessor-retailer.

(e) To sell a vehicle which has not been previously leased, bailed or rented or acquired or contracted for lease or rental by the lessor-retailer.

(f) To display a vehicle for sale at a location other than the principal place of business or branch office authorized by the department for that lessor-retailer.

SEC. 37. Section 11617 of the Vehicle Code is amended to read:

11617. (a) The license provided for in this chapter shall be automatically canceled upon the happening of any of the following:

(1) The abandonment of the principal place of business of the lessor-retailer or the change thereof without notice to the department as provided in Section 11610.

(2) The failure of the licensee to maintain an adequate bond or to procure and file another bond as required by Section 11612 prior to the effective date of the termination by the surety of any existing bond.

(3) The voluntary or involuntary surrender for any cause by the licensee of the license, except that a surrender of the license, or cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee, does not preclude the filing of an accusation for revocation or suspension of the surrendered license as provided in Section 11613, and does not affect the department's decision to suspend or revoke the license. The department's determination to suspend or revoke the license may be considered in issuing or refusing to issue any subsequent license authorized by this division to that licensee or any business representative of that licensee.

(4) Notification to the department that the person designated as licensee has changed.

(5) The suspension or cancellation of the corporate status of the licensee.

(6) The suspension or revocation of the seller's permit of the licensee by the State Board of Equalization.

(b) The branch office location license provided for in this chapter shall be automatically canceled upon the abandonment of the branch office location of the lessor-retailer or the change of that branch office without notice to the department as provided in Section 11610.

SEC. 38. Section 11700 of the Vehicle Code is amended to read:

11700. No person shall act as a dealer, remanufacturer, manufacturer, or transporter, or as a manufacturer branch, remanufacturer branch, distributor, or distributor branch, without having first been issued a license as required in Section 11701 or temporary permit issued by the department, except that, when the license or temporary permit has been canceled, suspended, or revoked or has expired, any vehicle in the dealer's inventory and owned by the dealer when the dealer ceased to be licensed may be sold at wholesale to a licensed dealer. The former licensee shall give the purchasing dealer a statement of facts stating that the seller is not a licensed dealer. Any vehicle on consignment with the dealer when the dealer ceased to be licensed shall be returned to the consignor. Any vehicle in the dealer's possession, but not owned by the dealer and not on consignment when the dealer ceased to be licensed, shall be returned to the owner of the vehicle.

SEC. 39. Section 11703 of the Vehicle Code is amended to read:

11703. The department may refuse to issue a license to a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer, if it determines any of the following:

(a) The applicant was previously the holder, or a managerial employee of the holder, of a license issued under this chapter which was revoked for cause and never reissued by the department, or which was suspended for cause and the terms of suspension have not been fulfilled.

(b) The applicant was previously a business representative of a business whose license issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled.

(c) If the applicant is a business, a business representative of the business was previously the holder of a license, or was a business representative of a business whose license, issued under this chapter was revoked for cause and never reissued or was suspended for cause and the terms of suspension have not been fulfilled; or, by reason of the facts and circumstances related to the organization, control, and management of the business, the operation of that business will be directed, controlled, or managed by individuals who, by reason of their conviction of violations of the provisions of this code, would be ineligible for a license and, by licensing the business, the purposes of this chapter would be defeated.

(d) The applicant, or a business representative if the applicant is a business, has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(e) The information contained in the application is incorrect.

(f) Upon investigation, the business history required by Section 11704 contains incomplete or incorrect information, or reflects substantial business irregularities.

(g) A decision of the department to cancel, suspend, or revoke a license has been made and the applicant was a business representative of the business regulated under that license.

SEC. 40. Section 11703.1 of the Vehicle Code is amended to read:

11703.1. Any of the causes specified in this chapter as a cause to suspend or revoke the license issued to a dealer, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or transporter, is cause to refuse to issue a license to a dealer, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or transporter.

SEC. 41. Section 11705 of the Vehicle Code is amended to read:

11705. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has done any of the following:

(1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made any false statement or knowingly concealed any material fact, in the application for the license.

(2) Made, or knowingly or negligently permitted, any illegal use of the special plates issued to the licensee.

(3) Used a false or fictitious name, knowingly made any false statement, or knowingly concealed any material fact, in any application for the registration of a vehicle, or otherwise committed a fraud in the application.

(4) Failed to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.

(5) Knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle.

(6) Failed to provide and maintain a clear physical division between the type of business licensed pursuant to this chapter and any other type of business conducted at the established place of business.

(7) Willfully violated Section 3064 or 3065 or any rule or regulation adopted pursuant thereto.

(8) Violated any provision of Division 3 (commencing with

Section 4000) or any rule or regulation adopted pursuant thereto, or subdivision (a) of Section 38200.

(9) Violated any provision of Division 4 (commencing with Section 10500) or any rule or regulation adopted pursuant thereto.

(10) Violated any provision of Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 or any rule or regulation adopted pursuant thereto.

(11) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

(12) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or any rule or regulation adopted pursuant thereto.

(13) Submitted a check, draft, or money order to the department for any obligation or fee due the state which was dishonored or refused payment upon presentation.

(14) Has caused any person to suffer any loss or damage by reason of any fraud or deceit practiced on that person or fraudulent representations made to that person in the course of the licensed activity.

For purposes of this paragraph, "fraud" includes any act or omission which is included within the definition of either "actual fraud" or "constructive fraud" as defined in Sections 1572 and 1573 of the Civil Code, and "deceit" has the same meaning as defined in Section 1710 of the Civil Code. In addition, "fraud" and "deceit" include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this paragraph, "person" also includes a governmental entity.

(15) Failed to meet the terms and conditions of an agreement entered into pursuant to Section 11707.

(16) Violated Section 43151, 43152, or 43153 of the Health and Safety Code.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license issued to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer.

(c) Except as provided in Section 11707, every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 42. Section 11709.1 is added to the Vehicle Code, to read:

11709.1. Every dealer who displays or offers one or more used

vehicles for sale at retail shall post a notice not less than 8 inches high and 10 inches wide, in a place conspicuous to the public, which states the following:

"The prospective purchaser of a vehicle may, at his or her own expense and with the approval of the dealer, have the vehicle inspected by an independent third party either on or off these premises."

SEC. 43. Section 11713 of the Vehicle Code is amended to read:

11713. No holder of any license issued under this article shall do any of the following:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, any such statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) Advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer not franchised to sell new motor vehicles of a particular line-make, may advertise that it has the ability to purchase for resale vehicles available from franchised dealers if the advertisement or offer clearly and conspicuously states: "Dealer is not franchised to sell or service new vehicles. All vehicles purchased directly from dealer must be purchased as used and are subject to availability from a franchised dealer."

(c) Fail, within 48 hours, in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.

(e) Engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) Include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid,

as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) Employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or willfully fail to notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) Deliver, following sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000).

(j) Use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) Advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the license holder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(*l*) Participate in the sale of a vehicle reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the purchase or sale of vehicles required to be registered under this code, or permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles purchased or sold by, or the business of, or branch location used by, the other person.

(n) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) Sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which any manufacturer's or distributor's warranty commenced.

(p) Accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. A purchase deposit relative to the sale of a vehicle by a dealer not franchised to sell new motor vehicles of a particular line-make shall be subject to all of the following conditions:

(A) There is a written purchase order.

(B) The deposit does not exceed 2.5 percent of the total purchase price specified in the written purchase order.

(C) The deposit is deposited in a federally insured depository

institution in a trust account held in favor of the purchaser.

(D) The deposit is entirely refundable upon written notice to the dealer.

(E) The purchaser is advised in writing of the right to rescind the transaction prior to the delivery of the vehicle.

(F) Each purchase agreement includes a provision for liquidated damages in the event of default under the purchase agreement, which shall not limit the dealer's right of offset against funds held in favor of the purchaser in the trust account.

(q) Consign for sale to another dealer a new vehicle.

(r) Display a vehicle for sale at a location other than an established place of business authorized by the department for that dealer. This subdivision does not apply to the display of a vehicle pursuant to subdivision (b) of Section 11709 or the demonstration of the qualities of a motor vehicle by way of a test drive.

SEC. 44. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is unlawful and a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) To advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) To advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except sales tax, vehicle registration fees, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed thirty-five dollars ($35).

(c) To exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer documentary preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(d) To represent the dealer documentary preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) To fail to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer documentary preparation charge, which charges shall not exceed

thirty-five dollars ($35) for the documentary preparation charge and twenty-five dollars ($25) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) To advertise for sale as new any new vehicle of a line-make for which the dealer does not hold a franchise.

This subdivision does not apply to any transaction involving a mobilehome as defined in Section 396 of this code, a recreational vehicle as defined in Section 18010.5 of the Health and Safety Code, a commercial coach as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification as defined in Section 38012, or a commercial vehicle as defined in Section 260.

(g) To sell a park trailer, as defined in subdivision (f) of Section 799.24 of the Civil Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) To advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) To advertise vehicles and related goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(j) To use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) To require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(*l*) To advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) To misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) To advertise a vehicle at a specified amount above, below, or at the manufacturer's or distributor's invoice price to the dealer, unless the advertisement clearly and conspicuously states that the invoice amount may exceed the actual dealer cost because of allowances provided to the dealer by the manufacturer or distributor.

(o) To violate any law prohibiting bait and switch advertising,

including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) To make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(q) To affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additonal price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) To advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other dealer in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) To advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) To display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

SEC. 45. Section 11716 of the Vehicle Code is amended to read:

11716. A manufacturer, remanufacturer, transporter, distributor, or dealer, in the course of business, may operate or move any vehicle of a type otherwise required to be registered under this code without

registering the vehicle, and without license or special plates attached thereto, from a vessel, railroad depot, or warehouse over the highways to a warehouse or salesroom upon first having obtained a written permit from the department authorizing that operation.

SEC. 46. Section 11721 of the Vehicle Code is amended to read:

11721. The special plates and licenses provided for in this article shall be automatically canceled upon the happening of any of the following:

(a) The abandonment of the established place of business of the dealer or the change thereof without notice to the department as provided in Section 11712.

(b) The failure of the licensee to maintain an adequate bond or to procure and file another bond as provided in Section 11710 prior to the effective date of the termination by the surety of any existing bond.

(c) The voluntary or involuntary surrender for any cause by the licensee of the special plates and license, except that the surrender of the special plates and license, the cessation of business by the licensee, or the suspension or revocation of the corporate status of the licensee, does not preclude the filing of an accusation for revocation or suspension of the surrendered license as provided in Section 11705, does not affect the department's decision to suspend or revoke the license. The department's determination to suspend or revoke the license may be considered in issuing or refusing to issue any subsequent license authorized by this division to that licensee or to a business representative of that prior licensee.

(d) Notification to the department that the person designated as licensee has changed, except that the special plates issued to the original licensee may be transferred and the newly designated licensee as transferee shall succeed to the privileges evidenced by the plates until their expiration.

(e) The suspension or revocation of the corporate status of the licensee.

(f) The suspension or revocation of the seller's permit of the licensee by the State Board of Equalization.

SEC. 47. Section 11728 of the Vehicle Code is amended to read:

11728. As part of a compromise settlement agreement entered into pursuant to Section 11707 or 11808.5, the department may assess a monetary penalty of not more than two thousand five hundred dollars ($2,500) per violation and impose a license suspension of not more than 30 days for any dealer who violates subdivision (s) of Section 11713. The extent of the penalties shall be based on the nature of the violation and effect of the violation on the purposes of this article. Except for the penalty limits provided for in Sections 11707 and 11808.5, all the provisions governing compromise settlement agreements for dealers, salesmen, and wholesalers apply to this section.

SEC. 48. Section 11800 of the Vehicle Code is amended to read:

11800. It shall be unlawful for any person to act as a vehicle

salesperson without having first procured a license or temporary permit issued by the department or when that license or temporary permit issued by the department has been canceled, suspended, revoked, or invalidated or has expired.

SEC. 49. Section 11802 of the Vehicle Code is amended to read:

11802. (a) The department shall prescribe and provide forms to be used for application for licenses to be issued under this article and require of applicants, as a condition of the issuance of a license, that information concerning the applicant's character, honesty, integrity, and reputation as it considers necessary. Every application for a vehicle salesperson's license shall contain, in addition to that information which the department requires, a statement of all of the following facts:

(1) The name and address of the applicant.

(2) Whether the applicant has ever had a court judgment rendered for which he or she has been liable as a result of his or her activities in conjunction with an occupational license issued under this division, and whether that judgment remains unpaid or unsatisfied.

(3) Whether the applicant ever had a license, issued under this division, revoked, suspended, or subjected to other disciplinary action and whether the applicant was ever a partner in a partnership or an officer, director, or stockholder in a corporation licensed under this division, the license of which was revoked, suspended, or subjected to other disciplinary action.

(b) The department shall issue a license bearing a fullface photograph of the licensee and the following information:

(1) Name and address.

(2) Physical description.

(3) The licensee's usual signature.

(4) Distinguishing vehicle salesperson's license number.

SEC. 50. Section 11803 of the Vehicle Code is amended to read:

11803. Pending the satisfaction of the department that the applicant has met the requirements of this chapter, it may issue a temporary permit to any person applying for a vehicle salesperson's license. The temporary permit shall permit the operation by the salesperson for a period of not more than 120 days while the department is completing its investigation of the applicant for the license. If the department determines to its satisfaction that the temporary permit was issued upon a fraudulent application or determines or has reasonable cause to believe that the application is incorrect or incomplete or the temporary permit was issued in error, the department may cancel the temporary permit, effective immediately. If, however, the department determines that the information in the application is correct and complete, the temporary permit shall become invalid when the department issues, or refuses to issue, a license, unless within five days of receipt of a notice of refusal to issue and statement of issues, the applicant demands a hearing pursuant to subdivision (c) of Section 11810. The

filing of a demand for a hearing shall stay the effective date of the invalidation of the temporary permit, pending a hearing and a determination of the issues. The notice of refusal to issue shall become effective and final five days after its receipt by the applicant.

SEC. 51. Section 11804 of the Vehicle Code is amended to read:

11804. The department may issue or, for reasonable cause shown, refuse to issue, a license to any applicant applying for a vehicle salesperson's license.

SEC. 52. Section 11806 of the Vehicle Code is amended to read:

11806. The department, after notice and hearing, may refuse to issue, or may suspend or revoke, a vehicle salesperson's license when it makes any of the following findings and determinations:

(a) The applicant or licensee has outstanding an unsatisfied final court judgment rendered in connection with an activity licensed under this division.

(b) The applicant or licensee has failed to pay funds or property received in the course of employment to a dealer entitled thereto.

(c) The applicant or licensee has failed to surrender possession of, or failed to return, any vehicle to a dealer lawfully entitled thereto upon termination of employment.

(d) A cause for refusal, suspension, or revocation exists under any provision of Sections 11302 to 11909, inclusive.

(e) The applicant or licensee has acted as a dealer by purchasing or selling vehicles while employed by a licensed dealer without reporting that fact to the dealer or without utilizing the report of sale documents issued to the dealer.

(f) The applicant or licensee has acted as a vehicle salesperson or engaged in that activity for, or on behalf of, more than one licensed dealer whose business does not have identical ownership and structure. Nothing in this section restricts the number of dealerships of which a person may be an owner, officer, or director, or precludes a vehicle salesperson from working at more than one location of one licensed dealer if the business of that dealer has identical ownership and structure.

(g) The applicant or licensee has acted as a vehicle salesperson without having first complied with Section 11812.

(h) The applicant or licensee was a managerial employee of a dealer during the time a person under the direction or control of the managerial employee committed wrongful acts which resulted in the suspension or revocation of the dealer's license.

(i) The applicant or licensee has acted as a dealer by purchasing or selling any vehicle and using the license, report of sale books, purchase drafts, financial institution accounts, or other supplies of a dealer to facilitate that purchase or sale, when the applicant or licensee is not acting on behalf of that dealer.

SEC. 53. Section 11808 of the Vehicle Code is amended to read:

11808. Every hearing provided for in this article shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 54. Section 11810 of the Vehicle Code is amended to read:

11810. (a) The department may, pending a hearing, temporarily suspend the license issued to a vehicle salesperson for a period of not more than 30 days if the director finds that action to be required in the public interest. In that case, a hearing shall be held and a decision thereon issued within 30 days after notice of the temporary suspension.

(b) Except where the provisions of this code require the refusal to issue a license, the department may issue a probationary license subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall be those which may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant, as disclosed by the application and investigation by the department of the information contained in the application.

(c) If the department issues or renews a vehicle salesperson's license requiring conditions of probation or if the department refuses to issue a vehicle salesperson's license, the applicant may demand in writing a hearing before the director or the director's representative within 60 days after notice of refusal to issue or issuance of the probationary license.

(d) A person whose license has been revoked or whose application for a license has been denied may reapply for a license after not less than one year has elapsed from the effective date of the decision revoking the license or denying the application, except that if the decision was based upon subdivision (a) of Section 11806, an earlier reapplication may be made accompanied by evidence satisfactory to the department that those grounds for revocation or denial of the license no longer exist.

SEC. 55. Section 11812 of the Vehicle Code is amended to read:

11812. (a) Every vehicle salesperson licensed under this article shall, at the time of employment, deliver to his or her employing dealer his or her salesperson's license to be posted in a place conspicuous to the public on the premises where he or she is actually engaged in the selling of vehicles for the employing dealer.

(b) The license shall be displayed continuously during the employment. If a vehicle salesperson's employment is terminated, the license shall be returned to the salesperson.

(c) Every vehicle salesperson licensed pursuant to this article shall report in writing to the department every change of residence address within five days of the change.

(d) Any person currently or previously licensed under this article who no longer resides at the address last filed with the department may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that residence, unless the person has notified the department in writing of another address where service may be made.

SEC. 56. Section 11819 of the Vehicle Code is amended to read:

11819. It is unlawful for any person:

(a) To lend a salesperson's license to any other person or knowingly permit its use by another.

(b) To display or represent any salesperson's license not issued to the person as being his or her license.

(c) To fail or refuse to surrender to the department, upon its lawful demand, any salesperson's license which has been suspended, revoked or canceled.

(d) To permit any unlawful use of a salesperson's license issued to him or her.

(e) To photograph, photostat, duplicate, or in any way reproduce any salesperson's license or facsimile thereof in such a manner that it could be mistaken for a valid license, or to display or have in possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

SEC. 57. Section 11824 of the Vehicle Code is amended to read:

11824. The suspension, expiration, or cancellation of a vehicle salesperson's license issued under this article does not prevent the filing of an accusation for the revocation or suspension of the suspended, expired, or canceled license as provided in Section 11806, and the department's decision that the license should be suspended or revoked. That determination may be considered in granting or refusing to grant any subsequent license authorized by this division to that licensee.

SEC. 58. Section 11902 of the Vehicle Code is amended to read:

11902. (a) The department shall issue a representative's license when it finds and determines that the applicant has furnished the required information, and that the applicant intends in good faith to act as a representative and has paid the fees required by Sections 9262 and 11723.

(b) The department may refuse to issue, or may suspend or revoke, a license for any of the following reasons:

(1) The information in the application is incorrect.

(2) The applicant or licensee has been convicted of a crime or committed any act or engaged in any conduct involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(3) The applicant or licensee has outstanding an unpaid final court judgment rendered in connection with an activity licensed under this chapter.

(4) The applicant or licensee was previously the holder of, or was a business representative of a business which was the holder of, a license and certificate issued under this chapter which were revoked for cause and not reissued by the department or which were suspended for cause and the terms of suspension have not been fulfilled.

(5) The applicant or licensee has committed any act prohibited by

Section 11713.2 or 11713.3.

(c) Pending the determination of the department that the applicant has met the requirements of this chapter, it may issue a temporary permit to any person applying for a representative's license. The temporary permit shall permit the operation by the representative for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant for a license. The temporary permit is invalid after the applicant's license has been issued or refused.

(d) The department may issue a probationary representative's license based upon the existence of any circumstance set forth in subdivision (b), subject to conditions to be observed in the exercise of the privilege granted, either upon application for the issuance of a license or upon application for the renewal of a license. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be those which, in the judgment of the department, are in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

SEC. 59. Section 11902.5 is added to the Vehicle Code, to read:

11902.5. (a) The department, after notice and hearing, on an interim basis, may refuse to issue or may suspend a license issued under this chapter when the applicant or licensee has been convicted of a crime involving moral turpitude which is substantially related to the qualifications, functions, or duties of the licensed activity, if an appeal of the conviction is pending or the conviction has otherwise not become final. A conviction after a plea of nolo contendere is a conviction within the meaning of this section.

(b) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is affirmed on appeal or otherwise becomes final, the refusal to issue or suspension shall automatically take effect as a denial or revocation, as the case may be, of the license. If the interim refusal to issue or suspension was stayed under probationary terms and conditions, the subsequent automatic denial or revocation shall also be stayed under the same terms and conditions for a term not to exceed the original term of probation for the interim refusal or suspension.

(c) If a conviction, upon which an interim refusal to issue or suspension under subdivision (a) is based, is reversed on appeal, the refusal or suspension shall be set aside immediately by the department.

SEC. 60. Chapter 11 (commencing with Section 12200) of Division 5 of the Vehicle Code is repealed.

SEC. 61. Section 24007.3 of the Vehicle Code is repealed.

SEC. 62. Section 40000.77 is added to the Vehicle Code, to read:

40000.77. A violation of Article 7 (commencing with Section 2570) of Chapter 2.5 of Division 2, relating to transportation of school

pupils, is a misdemeanor, and not an infraction.

SEC. 63. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1564

An act to amend Section 487h of the Penal Code, and to amend Section 10851 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 487h of the Penal Code is amended to read:

487h. (a) Every person who feloniously steals or takes any motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section 21 of the Harbors and Navigation Code, is guilty of grand theft, and upon conviction thereof, is punishable by imprisonment in the state prison for two, three, or four years or a fine of not more than ten thousand dollars ($10,000), or both, or by imprisonment in the county jail not to exceed one year or a fine of not more than one thousand dollars ($1,000), or both.

(b) Any person who, having been convicted of two previous misdemeanor violations of subdivision (a), former paragraph (3) of Section 487, involving an automobile, or Section 10851 of the Vehicle Code, or any combination of those offenses as misdemeanors, is subsequently convicted of a violation of subdivision (a) is punishable for the subsequent conviction by imprisonment in the state prison for two, three, or four years.

(c) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony violation of subdivision (a) or (b), and who has been previously convicted of two or more felony violations of the offense set forth in subdivision (a), the offense set forth in former paragraph (3) of Section 487, involving a vehicle, or the offense set forth in Section 10851 of the

Vehicle Code, or who has been previously convicted of one felony violation of any of those offenses and at least two misdemeanor violations of those offenses.

(d) If the court grants probation under subdivision (c), it shall specify on the court record the reason or reasons for that order.

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 2. Section 10851 of the Vehicle Code, as amended by Section 11 of Chapter 930 of the Statutes of 1989, is amended to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily to deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in the state prison for two, three, or four years or a fine of not more than ten thousand dollars ($10,000), or both, or by imprisonment in the county jail not to exceed one year or a fine of not more than one thousand dollars ($1,000), or both.

(b) Any person who, having been convicted of two previous misdemeanor violations of subdivision (a), former paragraph (3) of Section 487 of the Penal Code, involving an automobile, Section 487h of the Penal Code, or Section 10851 of the Vehicle Code or any combination of those offenses as misdemeanors, is subsequently convicted of a violation of subdivision (a) is punishable for the subsequent conviction by imprisonment in the state prison for two, three, or four years.

(c) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, taken while the ambulance or vehicle is on an emergency call and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 or 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person who is party or an accessory in the driving or unauthorized taking or stealing, the offense is a felony punishable by imprisonment in the state prison for two, four, or six years and by a fine of not more than ten thousand dollars ($10,000).

(d) (1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony violation of subdivision (a), (b), or (c), and who has been previously

convicted of two or more felony violations of the offense set forth in subdivision (a) or (c), the offense set forth in former paragraph (3) of Section 487 of the Penal Code, involving a vehicle, or the offense set forth in Section 487h of the Penal Code, or who has been previously convicted of one felony violation of any of those offenses and at least two misdemeanor violations of those offenses.

(2) If the court grants probation under paragraph (1), it shall specify on the court record the reason or reasons for that order.

(e) In any prosecution for a violation of subdivision (a) or (c), the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person.

(f) The existence of any fact which makes subdivision (c) applicable shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Due to confusion in the law regarding the interpretation of certain provisions contained in Chapter 930 of the Statutes of 1989 and the application of certain sections of that chapter in sentencing persons who have been previously convicted of vehicle thefts, it is essential that this act take effect immediately.

CHAPTER 1565

An act to amend Section 66484.3 of the Government Code, relating to highways.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 66484.3 of the Government Code is amended to read:

66484.3. (a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a

condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element, transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the

governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this section, unless the protests are overruled by an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of

the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

If the provisions of this paragraph (6), or provisions implementing this paragraph contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area. Moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. A city or county imposing fees pursuant to this section may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for the purpose of, among others, jointly exercising as a duly authorized original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system,

including, but not limited to, those segments of the state highway system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation. Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls, except that a joint powers agency, which is the lending agency, may, notwithstanding subdivision (c), make toll revenues and fees imposed pursuant to this section available to another joint powers agency, which is the borrowing agency, established for the purpose of designing, financing, and constructing coordinated and interrelated major thoroughfares, in the form of a subordinated loan, to pay for the cost of construction and toll collection of major thoroughfares other than the major thoroughfares for which the toll or fee is charged, if the lending agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1, and if the borrowing agency is required to pay interest on the loan to the lending agency at a rate equal to the interest rate charged on funds loaned from the Pooled Money Investment Account. Prior to executing the loan, the lending agency shall make all of the following findings:

(1) The major thoroughfare for which the toll or fee is charged will benefit from the construction of the major thoroughfare to be constructed by the borrowing agency or will benefit financially by a sharing of revenues with the borrowing agency.

(2) The lending agency will possess adequate financial resources to fund all costs of construction of existing and future projects that it plans to undertake prior to the final maturity of the loan, after funding the loan, and taking into consideration its then existing funds, its present and future obligations, and the revenues and fees it expects to receive.

(3) The funding of the loan will not materially impair its financial condition or operations during the term of the loan.

Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose, as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers

authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967=100), as published by the United States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(h) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(i) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(j) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding. This subdivision shall also apply to modifications of fee programs.

(k) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of

constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the construction of the bridges and major thoroughfares referred to in this section.

(*l*) Nothing in this section prohibits the succession of all powers, obligations, liabilities, and duties of any joint powers agency created pursuant to subdivision (k) to an entity with comprehensive countywide transportation planning and operating authority which is statutorily created in the County of Orange and which is statutorily authorized to assume those powers, obligations, liabilities, and duties.

SEC. 2. Section 66484.3 of the Government Code is amended to read:

66484.3. (a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element, transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution, except that the resolution of a city or county which has entered into a joint exercise of powers agreement pursuant to subdivision (f), relating to constructing bridges over waterways, railways, freeways, and canyons or constructing major thoroughfares by the joint powers agency, may be modified by the joint powers agency following public notice and a public hearing, if the joint powers agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an

addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this section, unless the protests are overruled by an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

If the provisions of this paragraph (6), or provisions implementing this paragraph contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area. Moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county

or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. A city or county imposing fees pursuant to this section may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for the purpose of, among others, jointly exercising as a duly authorized original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system, including, but not limited to, those segments of the state highway system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation. Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls , except that a joint powers agency, which is the lending agency, may, notwithstanding subdivision (c), make toll revenues and fees imposed pursuant to this section available to another joint powers agency, which is the borrowing agency, established for the purpose of designing, financing, and constructing coordinated and

interrelated major thoroughfares, in the form of a subordinated loan, to pay for the cost of construction and toll collection of major thoroughfares other than the major thoroughfares for which the toll or fee is charged, if the lending agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1, and if the borrowing agency is required to pay interest on the loan to the lending agency at a rate equal to the interest rate charged on funds loaned from the Pooled Money Investment Account. Prior to executing the loan, the lending agency shall make all of the following findings:

(1) The major thoroughfare for which the toll or fee is charged will benefit from the construction of the major thoroughfare to be constructed by the borrowing agency or will benefit financially by a sharing of revenues with the borrowing agency.

(2) The lending agency will possess adequate financial resources to fund all costs of construction of existing and future projects that it plans to undertake prior to the final maturity of the loan, after funding the loan, and taking into consideration its then existing funds, its present and future obligations, and the revenues and fees it expects to receive.

(3) The funding of the loan will not materially impair its financial condition or operations during the term of the loan.

Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose, as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967=100), as published by the United

States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(h) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(i) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(j) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding. This subdivision shall also apply to modifications of fee programs.

(k) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the construction of the bridges and major thoroughfares referred to in this section.

(*l*) Nothing in this section prohibits the succession of all powers, obligations, liabilities, and duties of any joint powers agency created pursuant to subdivision (k) to an entity with comprehensive countywide transportation planning and operating authority which is statutorily created in the County of Orange and which is statutorily authorized to assume those powers, obligations, liabilities, and duties.

SEC. 3. Section 66484.3 of the Government Code is amended to read:

66484.3. (a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways,

railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element, transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property

within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this section, unless the protests are overruled by an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than

one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

If the provisions of this paragraph (6), or provisions implementing this paragraph contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area. Except as otherwise provided in subdivision (g), moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. A city or county imposing fees pursuant to this section may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for the purpose of, among others, jointly exercising as a duly authorized original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system, including, but not limited to, those segments of the state highway

system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation. Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls , except that a joint powers agency, which is the lending agency, may, notwithstanding subdivision (c), make toll revenues and fees imposed pursuant to this section available to another joint powers agency, which is the borrowing agency, established for the purpose of designing, financing, and constructing coordinated and interrelated major thoroughfares, in the form of a subordinated loan, to pay for the cost of construction and toll collection of major thoroughfares other than the major thoroughfares for which the toll or fee is charged, if the lending agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1, and if the borrowing agency is required to pay interest on the loan to the lending agency at a rate equal to the interest rate charged on funds loaned from the Pooled Money Investment Account. Prior to executing the loan, the lending agency shall make all of the following findings:

(1) The major thoroughfare for which the toll or fee is charged will benefit from the construction of the major thoroughfare to be constructed by the borrowing agency or will benefit financially by a sharing of revenues with the borrowing agency.

(2) The lending agency will possess adequate financial resources to fund all costs of construction of existing and future projects that it plans to undertake prior to the final maturity of the loan, after funding the loan, and taking into consideration its then existing funds, its present and future obligations, and the revenues and fees it expects to receive.

(3) The funding of the loan will not materially impair its financial condition or operations during the term of the loan.

Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose, as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers authorized in Chapter 5 (commencing with Section 31100) of

Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967=100), as published by the United States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(h) Fees paid pursuant to an ordinance adopted pursuant to this section may be utilized to defray all direct and indirect financing costs related to the construction of the bridges and major thoroughfares by the joint powers agency. Because the financing costs of bridges and major thoroughfares for which a toll charge shall be established or collected represent a necessary element of the total cost of those bridges and major thoroughfares, the joint powers agency constructing those facilities may include a charge for financing costs in the calculation of the fee rate. The charge shall be based on the estimated financing cost of any eligible portion of the bridges and major thoroughfares for which tolls shall be collected. The eligible portion shall be any or all portions of the major thoroughfare for which a viable financial plan has been adopted by the joint powers agency on the basis of revenues reasonably expected by the joint powers agency to be available to the thoroughfare, after consultation with representatives of the fee payers. For purposes of calculating the charge, financing costs shall include only reasonable allowances for payments and charges for principal, interest, and premium on indebtedness, letter of credit fees and charges, remarketing fees and charges, underwriters' discount, and other costs of issuance, less net earnings on bridge and major thoroughfare

funds by the joint powers agency prior to the opening of the facility to traffic after giving effect to any payments from the fund to preserve the federal income tax exemption on the indebtedness. For purposes of calculating the charge for financing costs in the calculation of the fee rate only, financing costs shall not include any allowance for the cost of any interest paid on indebtedness with regard to each eligible portion after the estimated opening of the portion to traffic as established by the joint powers agency. Any and all challenges to any financial plan or financing costs adopted or calculated pursuant to this section shall be governed by subdivision (k).

(i) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(j) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(k) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding. This subdivision shall also apply to modifications of fee programs.

(*l*) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the construction of the bridges and major thoroughfares referred to in this section.

(m) Nothing in this section prohibits the succession of all powers, obligations, liabilities, and duties of any joint powers agency created pursuant to subdivision (*l*) to an entity with comprehensive countywide transportation planning and operating authority which is statutorily created in the County of Orange and which is statutorily authorized to assume those powers, obligations, liabilities, and duties.

SEC. 4. Section 66484.3 of the Government Code is amended to read:

66484.3. (a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils

of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element, transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution, except that the resolution of a city or county which has entered into a joint exercise of powers agreement pursuant to subdivision (f), relating to constructing bridges over waterways,

railways, freeways, and canyons or constructing major thoroughfares by the joint powers agency, may be modified by the joint powers agency following public notice and a public hearing, if the joint powers agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this section, unless the protests are overruled by an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

If the provisions of this paragraph (6), or provisions implementing this paragraph contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area. Except as otherwise provided in subdivision (g), moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. A city or county imposing fees pursuant to this section may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for the purpose of, among others, jointly exercising as a duly authorized

original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system, including, but not limited to, those segments of the state highway system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation. Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls , except that a joint powers agency, which is the lending agency, may, notwithstanding subdivision (c), make toll revenues and fees imposed pursuant to this section available to another joint powers agency, which is the borrowing agency, established for the purpose of designing, financing, and constructing coordinated and interrelated major thoroughfares, in the form of a subordinated loan, to pay for the cost of construction and toll collection of major thoroughfares other than the major thoroughfares for which the toll or fee is charged, if the lending agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1, and if the borrowing agency is required to pay interest on the loan to the lending agency at a rate equal to the interest rate charged on funds loaned from the Pooled Money Investment Account. Prior to executing the loan, the lending agency shall make all of the following findings:

(1) The major thoroughfare for which the toll or fee is charged will benefit from the construction of the major thoroughfare to be constructed by the borrowing agency or will benefit financially by a sharing of revenues with the borrowing agency.

(2) The lending agency will possess adequate financial resources to fund all costs of construction of existing and future projects that it plans to undertake prior to the final maturity of the loan, after

funding the loan, and taking into consideration its then existing funds, its present and future obligations, and the revenues and fees it expects to receive.

(3) The funding of the loan will not materially impair its financial condition or operations during the term of the loan.

Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose, as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967=100), as published by the United States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(h) Fees paid pursuant to an ordinance adopted pursuant to this section may be utilized to defray all direct and indirect financing costs related to the construction of the bridges and major thoroughfares by the joint powers agency. Because the financing costs of bridges and major thoroughfares for which a toll charge shall be established or collected represent a necessary element of the total cost of those bridges and major thoroughfares, the joint powers agency constructing those facilities may include a charge for financing costs in the calculation of the fee rate. The charge shall be based on the estimated financing cost of any eligible portion of the

bridges and major thoroughfares for which tolls shall be collected. The eligible portion shall be any or all portions of the major thoroughfare for which a viable financial plan has been adopted by the joint powers agency on the basis of revenues reasonably expected by the joint powers agency to be available to the thoroughfare, after consultation with representatives of the fee payers. For purposes of calculating the charge, financing costs shall include only reasonable allowances for payments and charges for principal, interest, and premium on indebtedness, letter of credit fees and charges, remarketing fees and charges, underwriters' discount, and other costs of issuance, less net earnings on bridge and major thoroughfare funds by the joint powers agency prior to the opening of the facility to traffic after giving effect to any payments from the fund to preserve the federal income tax exemption on the indebtedness. For purposes of calculating the charge for financing costs in the calculation of the fee rate only, financing costs shall not include any allowance for the cost of any interest paid on indebtedness with regard to each eligible portion after the estimated opening of the portion to traffic as established by the joint powers agency. Any and all challenges to any financial plan or financing costs adopted or calculated pursuant to this section shall be governed by subdivision (k).

(i) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(j) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(k) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding. This subdivision shall also apply to modifications of fee programs.

(*l*) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the construction of the bridges and major thoroughfares referred to in

this section.

(m) Nothing in this section prohibits the succession of all powers, obligations, liabilities, and duties of any joint powers agency created pursuant to subdivision (*l*) to an entity with comprehensive countywide transportation planning and operating authority which is statutorily created in the County of Orange and which is statutorily authorized to assume those powers, obligations, liabilities, and duties.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 66484.3 of the Government Code proposed by both this bill and SB 1435. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 66484.3 of the Government Code, (3) SB 1437 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1435, in which case Section 66484.3 of the Government Code, as amended by SB 1435, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 66484.3 of the Government Code proposed by both this bill and SB 1437. It shall only become operative if (1) both bills are enacted and become effective January 1, 1991, (2) each bill amends Section 66484.3 of the Government Code, (3) SB 1435 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1437 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 66484.3 of the Government Code proposed by this bill, SB 1435, and SB 1437. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1991, (2) all three bills amend Section 66484.3 of the Government Code, and (3) this bill is enacted after SB 1435 and SB 1437, in which case Section 66484.3 of the Government Code, as amended by SB 1435, shall remain operative only until the operative date of this bill, at which time Section 4 of this bill shall become operative, and Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 1566

An act to amend Section 66484.3 of the Government Code, relating to highways.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 66484.3 of the Government Code is amended to read:

66484.3. (a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element, transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee

apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution, except that the resolution of a city or county which has entered into a joint exercise of powers agreement pursuant to subdivision (f), relating to constructing bridges over waterways, railways, freeways, and canyons or constructing major thoroughfares by the joint powers agency, may be modified by the joint powers agency following public notice and a public hearing, if the joint powers agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half

of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this section, unless the protests are overruled by an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area. Moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge

facilities or major thoroughfares, and may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for the purpose of, among others, jointly exercising as a duly authorized original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system, including, but not limited to, those segments of the state highway system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation. Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls. Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental,

engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967=100), as published by the United States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(h) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(i) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(j) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding. This subdivision shall also apply to modifications of fee programs.

(k) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the construction of the bridges and major thoroughfares referred to in this section.

CHAPTER 1567

An act to amend Section 66484.3 of the Government Code, relating to highways.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 66484.3 of the Government Code is amended to read:

66484.3. (a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element, transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that, at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee

apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this section, unless the protests are overruled by

an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

If the provisions of this paragraph (6), or provisions implementing this paragraph contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area. Except as otherwise provided in subdivision (g), moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may

incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares, and may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for the purpose of, among others, jointly exercising as a duly authorized original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system, including, but not limited to, those segments of the state highway system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation. Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls. Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose, as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction,

including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967=100), as published by the United States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(h) Fees paid pursuant to an ordinance adopted pursuant to this section may be utilized to defray all direct and indirect financing costs related to the construction of the bridges and major thoroughfares by the joint powers agency. Because the financing costs of bridges and major thoroughfares for which a toll charge shall be established or collected represent a necessary element of the total cost of those bridges and major thoroughfares, the joint powers agency constructing those facilities may include a charge for financing costs in the calculation of the fee rate. The charge shall be based on the estimated financing cost of any eligible portion of the bridges and major thoroughfares for which tolls shall be collected. The eligible portion shall be any or all portions of the major thoroughfare for which a viable financial plan has been adopted by the joint powers agency on the basis of revenues reasonably expected by the joint powers agency to be available to the thoroughfare, after consultation with representatives of the fee payers. For purposes of calculating the charge, financing costs shall include only reasonable allowances for payments and charges for principal, interest, and premium on indebtedness, letter of credit fees and charges, remarketing fees and charges, underwriters' discount, and other costs of issuance, less net earnings on bridge and major thoroughfare funds by the joint powers agency prior to the opening of the facility to traffic after giving effect to any payments from the fund to preserve the federal income tax exemption on the indebtedness. For purposes of calculating the charge for financing costs in the calculation of the fee rate only, financing costs shall not include any allowance for the cost of any interest paid on indebtedness with regard to each eligible portion after the estimated opening of the portion to traffic as established by the joint powers agency. Any and all challenges to any financial plan or financing costs adopted or calculated pursuant to this section shall be governed by subdivision (k).

(i) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(j) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(k) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding. This subdivision shall also apply to modifications of fee programs.

(*l*) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the construction of the bridges and major thoroughfares referred to in this section.

SEC. 2. Section 66484.3 of the Government Code is amended to read:

66484.3. (a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element,

transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution, except that the resolution of a city or county which has entered into a joint exercise of powers agreement pursuant to subdivision (f), relating to constructing bridges over waterways, railways, freeways, and canyons or constructing major thoroughfares by the joint powers agency, may be modified by the joint powers agency following public notice and a public hearing, if the joint powers agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs

apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this section, unless the protests are overruled by an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

If the provisions of this paragraph (6), or provisions implementing this paragraph contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant

thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area. Except as otherwise provided in subdivision (g), moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares, and may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for the purpose of, among others, jointly exercising as a duly authorized original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system, including, but not limited to, those segments of the state highway system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation.

Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls. Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose, as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967=100), as published by the United States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(h) Fees paid pursuant to an ordinance adopted pursuant to this section may be utilized to defray all direct and indirect financing costs related to the construction of the bridges and major thoroughfares by the joint powers agency. Because the financing costs of bridges and major thoroughfares for which a toll charge shall be established or collected represent a necessary element of the total cost of those bridges and major thoroughfares, the joint powers

agency constructing those facilities may include a charge for financing costs in the calculation of the fee rate. The charge shall be based on the estimated financing cost of any eligible portion of the bridges and major thoroughfares for which tolls shall be collected. The eligible portion shall be any or all portions of the major thoroughfare for which a viable financial plan has been adopted by the joint powers agency on the basis of revenues reasonably expected by the joint powers agency to be available to the thoroughfare, after consultation with representatives of the fee payers. For purposes of calculating the charge, financing costs shall include only reasonable allowances for payments and charges for principal, interest, and premium on indebtedness, letter of credit fees and charges, remarketing fees and charges, underwriters' discount, and other costs of issuance, less net earnings on bridge and major thoroughfare funds by the joint powers agency prior to the opening of the facility to traffic after giving effect to any payments from the fund to preserve the federal income tax exemption on the indebtedness. For purposes of calculating the charge for financing costs in the calculation of the fee rate only, financing costs shall not include any allowance for the cost of any interest paid on indebtedness with regard to each eligible portion after the estimated opening of the portion to traffic as established by the joint powers agency. Any and all challenges to any financial plan or financing costs adopted or calculated pursuant to this section shall be governed by subdivision (k).

(i) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(j) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(k) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding. This subdivision shall also apply to modifications of fee programs.

(*l*) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor

local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the construction of the bridges and major thoroughfares referred to in this section.

SEC. 3. Section 66484.3 of the Government Code is amended to read:

66484.3. (a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element, transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be

incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this section, unless the protests are overruled by an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing

held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

If the provisions of this paragraph (6), or provisions implementing this paragraph contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area. Except as otherwise provided in subdivision (g), moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. A city or county imposing fees pursuant to this section may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for

the purpose of, among others, jointly exercising as a duly authorized original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system, including, but not limited to, those segments of the state highway system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation. Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls, except that a joint powers agency, which is the lending agency, may, notwithstanding subdivision (c), make toll revenues and fees imposed pursuant to this section available to another joint powers agency, which is the borrowing agency, established for the purpose of designing, financing, and constructing coordinated and interrelated major thoroughfares, in the form of a subordinated loan, to pay for the cost of construction and toll collection of major thoroughfares other than the major thoroughfares for which the toll or fee is charged, if the lending agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1, and if the borrowing agency is required to pay interest on the loan to the lending agency at a rate equal to the interest rate charged on funds loaned from the Pooled Money Investment Account. Prior to executing the loan, the lending agency shall make all of the following findings:

(1) The major thoroughfare for which the toll or fee is charged will benefit from the construction of the major thoroughfare to be constructed by the borrowing agency or will benefit financially by a sharing of revenues with the borrowing agency.

(2) The lending agency will possess adequate financial resources to fund all costs of construction of existing and future projects that

it plans to undertake prior to the final maturity of the loan, after funding the loan, and taking into consideration its then existing funds, its present and future obligations, and the revenues and fees it expects to receive.

(3) The funding of the loan will not materially impair its financial condition or operations during the term of the loan.

Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose, as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967=100), as published by the United States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(h) Fees paid pursuant to an ordinance adopted pursuant to this section may be utilized to defray all direct and indirect financing costs related to the construction of the bridges and major thoroughfares by the joint powers agency. Because the financing costs of bridges and major thoroughfares for which a toll charge shall be established or collected represent a necessary element of the total cost of those bridges and major thoroughfares, the joint powers agency constructing those facilities may include a charge for financing costs in the calculation of the fee rate. The charge shall be

based on the estimated financing cost of any eligible portion of the bridges and major thoroughfares for which tolls shall be collected. The eligible portion shall be any or all portions of the major thoroughfare for which a viable financial plan has been adopted by the joint powers agency on the basis of revenues reasonably expected by the joint powers agency to be available to the thoroughfare, after consultation with representatives of the fee payers. For purposes of calculating the charge, financing costs shall include only reasonable allowances for payments and charges for principal, interest, and premium on indebtedness, letter of credit fees and charges, remarketing fees and charges, underwriters' discount, and other costs of issuance, less net earnings on bridge and major thoroughfare funds by the joint powers agency prior to the opening of the facility to traffic after giving effect to any payments from the fund to preserve the federal income tax exemption on the indebtedness. For purposes of calculating the charge for financing costs in the calculation of the fee rate only, financing costs shall not include any allowance for the cost of any interest paid on indebtedness with regard to each eligible portion after the estimated opening of the portion to traffic as established by the joint powers agency. Any and all challenges to any financial plan or financing costs adopted or calculated pursuant to this section shall be governed by subdivision (k).

(i) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(j) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(k) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding. This subdivision shall also apply to modifications of fee programs.

(*l*) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the

construction of the bridges and major thoroughfares referred to in this section.

(m) Nothing in this section prohibits the succession of all powers, obligations, liabilities, and duties of any joint powers agency created pursuant to subdivision (*l*) to an entity with comprehensive countywide transportation planning and operating authority which is statutorily created in the County of Orange and which is statutorily authorized to assume those powers, obligations, liabilities, and duties.

SEC. 4. Section 66484.3 of the Government Code is amended to read:

66484.3. (a) Notwithstanding Section 53077.5, the Board of Supervisors of the County of Orange and the city council or councils of any city or cities in that county may, by ordinance, require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares.

(b) The local ordinance may require payment of fees pursuant to this section if:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation provisions or flood control provisions of the general plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads, and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to or which is part of the state highway system, and the circulation element, transportation provisions, or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit. Bridges which are part of a major thoroughfare need not be separately identified in the transportation or flood control provisions of the general plan.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65905. In addition to the requirements of Section 65905, the notice shall contain preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement

except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the County of Orange. The resolution may subsequently be modified in any respect by the governing body. Modifications shall be adopted in the same manner as the original resolution, except that the resolution of a city or county which has entered into a joint exercise of powers agreement pursuant to subdivision (f), relating to constructing bridges over waterways, railways, freeways, and canyons or constructing major thoroughfares by the joint powers agency, may be modified by the joint powers agency following public notice and a public hearing, if the joint powers agency has complied with all applicable laws, including Chapter 5 (commencing with Section 66000) of Division 1. Any modification shall be subject to the protest procedures prescribed by paragraph (6). The resolution may provide for automatic periodic adjustment of fees based upon the California Construction Cost Index prepared and published by the Department of Transportation, without further action of the governing body, including, but not limited to, public notice or hearing. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for any of the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing body shall make provision for payment of the share of improvement costs apportioned to those lands from other sources, but those sources need not be identified at the time of the adoption of the resolution.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction or widening of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. Fees imposed pursuant to this section shall not be expended to reimburse the cost of existing bridge facility construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

(6) The ordinance provides that if, within the time when protests may be filed under its provisions, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area

represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under this section, unless the protests are overruled by an affirmative vote of four-fifths of the legislative body.

Nothing in this section shall preclude the processing and recordation of maps in accordance with other provisions of this division if proceedings are abandoned.

Any protests may be withdrawn in writing by the owner who filed the protest, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body shall not be barred from commencing new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section shall prohibit the legislative body, within the one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

If the provisions of this paragraph (6), or provisions implementing this paragraph contained in any ordinance adopted pursuant to this section, are held invalid, that invalidity shall not affect other provisions of this section or of the ordinance adopted pursuant thereto, which can be given effect without the invalid provision, and to this end the provisions of this section and of an ordinance adopted pursuant thereto are severable.

(c) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be so established covering all of the bridge or major thoroughfare projects in the benefit area. Except as otherwise provided in subdivision (g), moneys in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the county or a city for the cost of constructing the improvement.

(d) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(e) The county or a city imposing fees pursuant to this section may advance money from its general fund or road fund to pay the

cost of constructing the improvements and may reimburse the general fund or road fund from planned bridge facilities or major thoroughfares funds established to finance the construction of the improvements.

(f) The county or a city imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. The sole security for repayment of the indebtedness shall be moneys in planned bridge facilities or major thoroughfares funds. A city or county imposing fees pursuant to this section may enter into joint exercise of powers agreements with other local agencies imposing fees pursuant to this section, for the purpose of, among others, jointly exercising as a duly authorized original power established by this section, in addition to those through a joint exercise of powers agreement, those powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code for the purpose of constructing bridge facilities and major thoroughfares in lieu of a tunnel and appurtenant facilities, and, notwithstanding Section 31200 of the Streets and Highways Code, may acquire by dedication, gift, purchase, or eminent domain, any franchise, rights, privileges, easements, or other interest in property, either real or personal, necessary therefor on segments of the state highway system, including, but not limited to, those segments of the state highway system eligible for federal participation pursuant to Title 23 of the United States Code.

An entity constructing bridge facilities and major thoroughfares pursuant to this section shall design and construct the bridge facilities and major thoroughfares to the standards and specifications of the Department of Transportation then in effect, and may, at any time, transfer all or a portion of the bridge facilities and major thoroughfares to the state subject to the terms and conditions as shall be satisfactory to the Director of the Department of Transportation. Any of these bridge facilities and major thoroughfares shall be designated as a portion of the state highway system prior to its transfer. The participants in a joint exercise of powers agreement may also exercise as a duly authorized original power established by this section the power to establish and collect toll charges only for paying for the costs of construction of the major thoroughfare for which the toll is charged and for the costs of collecting the tolls, except that a joint powers agency, which is the lending agency, may, notwithstanding subdivision (c), make toll revenues and fees imposed pursuant to this section available to another joint powers agency, which is the borrowing agency, established for the purpose of designing, financing, and constructing coordinated and interrelated major thoroughfares, in the form of a subordinated loan, to pay for the cost of construction and toll collection of major thoroughfares other than the major thoroughfares for which the toll or fee is charged, if the lending agency has complied with all applicable laws, including Chapter 5 (commencing with Section

66000) of Division 1, and if the borrowing agency is required to pay interest on the loan to the lending agency at a rate equal to the interest rate charged on funds loaned from the Pooled Money Investment Account. Prior to executing the loan, the lending agency shall make all of the following findings:

(1) The major thoroughfare for which the toll or fee is charged will benefit from the construction of the major thoroughfare to be constructed by the borrowing agency or will benefit financially by a sharing of revenues with the borrowing agency.

(2) The lending agency will possess adequate financial resources to fund all costs of construction of existing and future projects that it plans to undertake prior to the final maturity of the loan, after funding the loan, and taking into consideration its then existing funds, its present and future obligations, and the revenues and fees it expects to receive.

(3) The funding of the loan will not materially impair its financial condition or operations during the term of the loan.

Major thoroughfares from which tolls are charged shall utilize the toll collection equipment most capable of moving vehicles expeditiously and efficiently, and which is best suited for that purpose, as determined by the participants in the joint exercise of powers agreement. However, in no event shall the powers authorized in Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code be exercised unless a resolution is first adopted by the legislative body of the agency finding that adequate funding for the portion of the cost of constructing those bridge facilities and major thoroughfares not funded by the development fees collected by the agency is not available from any federal, state, or other source. Any major thoroughfare constructed and operated as a toll road pursuant to this section shall only be constructed parallel to other public thoroughfares and highways.

(g) The term "construction," as used in this section, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction" also includes reasonable general agency administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, Los Angeles-Long Beach-Anaheim, California (1967=100), as published by the United States Department of Commerce, by each agency created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 for the purpose of constructing bridges and major thoroughfares. "General agency administrative expenses" means those office, personnel, and other customary and normal expenses

associated with the direct management and administration of the agency, but not including costs of construction.

(h) Fees paid pursuant to an ordinance adopted pursuant to this section may be utilized to defray all direct and indirect financing costs related to the construction of the bridges and major thoroughfares by the joint powers agency. Because the financing costs of bridges and major thoroughfares for which a toll charge shall be established or collected represent a necessary element of the total cost of those bridges and major thoroughfares, the joint powers agency constructing those facilities may include a charge for financing costs in the calculation of the fee rate. The charge shall be based on the estimated financing cost of any eligible portion of the bridges and major thoroughfares for which tolls shall be collected. The eligible portion shall be any or all portions of the major thoroughfare for which a viable financial plan has been adopted by the joint powers agency on the basis of revenues reasonably expected by the joint powers agency to be available to the thoroughfare, after consultation with representatives of the fee payers. For purposes of calculating the charge, financing costs shall include only reasonable allowances for payments and charges for principal, interest, and premium on indebtedness, letter of credit fees and charges, remarketing fees and charges, underwriters' discount, and other costs of issuance, less net earnings on bridge and major thoroughfare funds by the joint powers agency prior to the opening of the facility to traffic after giving effect to any payments from the fund to preserve the federal income tax exemption on the indebtedness. For purposes of calculating the charge for financing costs in the calculation of the fee rate only, financing costs shall not include any allowance for the cost of any interest paid on indebtedness with regard to each eligible portion after the estimated opening of the portion to traffic as established by the joint powers agency. Any and all challenges to any financial plan or financing costs adopted or calculated pursuant to this section shall be governed by subdivision (k).

(i) Nothing in this section shall be construed to preclude the County of Orange or any city within that county from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

(j) Any city within the County of Orange may require the payment of fees in accordance with this section as to any property in an area of benefit within the city's boundaries, for facilities shown on its general plan or the county's general plan, whether the facilities are situated within or outside the boundaries of the city, and the county may expend fees for facilities or portions thereof located within cities in the county.

(k) The validity of any fee required pursuant to this section shall not be contested in any action or proceeding unless commenced within 60 days after recordation of the resolution described in paragraph (3) of subdivision (b). The provisions of Chapter 9

(commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure shall be applicable to any such action or proceeding. This subdivision shall also apply to modifications of fee programs.

(*l*) If the County of Orange and any city within that county have entered into a joint powers agreement for the purpose of constructing the bridges and major thoroughfares referred to in Sections 50029 and 66484.3, and if a proposed change of organization or reorganization includes any territory of an area of benefit established pursuant to Sections 50029 and 66484.3, within a successor local agency, the local agency shall not take any action that would impair, delay, frustrate, obstruct, or otherwise impede the construction of the bridges and major thoroughfares referred to in this section.

(m) Nothing in this section prohibits the succession of all powers, obligations, liabilities, and duties of any joint powers agency created pursuant to subdivision (*l*) to an entity with comprehensive countywide transportation planning and operating authority which is statutorily created in the County of Orange and which is statutorily authorized to assume those powers, obligations, liabilities, and duties.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 66484.3 of the Government Code proposed by both this bill and SB 1435. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 66484.3 of the Government Code, (3) SB 1436 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1435, in which case Section 66484.3 of the Government Code, as amended by SB 1435, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative and Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 66484.3 of the Government Code proposed by both this bill and SB 1436. It shall only become operative if (1) both bills are enacted and become effective January 1, 1991, (2) each bill amends Section 66484.3 of the Government Code, (3) SB 1435 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1436 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 66484.3 of the Government Code proposed by this bill, SB 1435, and SB 1436. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1991, (2) all three bills amend Section 66484.3 of the Government Code, and (3) this bill is enacted after SB 1435 and SB 1436, in which case Section 66484.3 of the Government Code, as amended by SB 1435, shall remain operative only until the operative date of this bill, at which time Section 4 of this bill shall become operative and Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 1568

An act to amend Section 33117.5 of the Education Code, to amend Section 4532 of the Government Code, to amend Section 4799.10 of the Public Resources Code, and to amend and repeal Section 11310 of, to repeal and add Article 3.2 (commencing with Section 11320) of, and to add Article 3.3 (commencing with Section 11330) to, Chapter 2 of Part 3 of Division 9 of, and to repeal Sections 11308, 11451.5, and Articles 3.3 (commencing with Section 11321), 3.5 (commencing with Section 11325), and 3.8 (commencing with Section 11347) of Chapter 2 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to public assistance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 33117.5 of the Education Code is amended to read:

33117.5. (a) Adult education programs and regional occupational programs operated by school districts and county offices of education that have contracted with the Superintendent of Public Instruction pursuant to subdivision (b) shall provide services to welfare recipients referred by county welfare departments in accordance with paragraph (6) of subdivision (c) of Section 11325.2 of the Welfare and Institutions Code. These services shall include an evaluation of the individual's educational and training needs for purposes of paragraph (6) of subdivision (c) of Section 11325.2 of the Welfare and Institutions Code and the preparation of a related education and training plan reflecting these needs. The plan shall specify the educational and training services to be provided and the length of time services are to be provided, and shall assure access to those services.

(b) The Superintendent of Public Instruction shall identify school districts or county offices of education which can best accommodate welfare recipients for whom vocational education, adult education, and English as a second language is specified in contracts required by Sections 11320.4 and 11325.2 of the Welfare and Institutions Code. The superintendent shall enter into contracts with each consenting district or county office, where necessary, so that the contracting district, independent regional occupation program, or county office shall provide at least 10 weekly hours of open entry-open exit skills training and education for welfare recipients who need this training to enable counties to meet their goals for plans developed pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. If a program is unable to provide at least 10 hours of instruction to these participants,

even though funds are available, the appropriate district or county office shall report to the superintendent the reasons why sufficient hours of instruction were not provided. The superintendent should provide technical assistance to those districts or county offices to resolve the problems that prohibit an adequate number of hours of instruction from being offered.

(c) Allocations to the Superintendent of Public Instruction of funds available under Section 202(b)(1) of the federal Job Training Partnership Act shall be used for purposes of this section to the extent the superintendent determines necessary.

The Superintendent of Public Instruction shall allocate these funds directly to those providers of educational and training services delivered in accordance with this section. The Superintendent of Public Instruction shall allocate to community college districts and the Chancellor's Office of the California Community Colleges such funds as are determined necessary pursuant to Section 71050. The Superintendent of Public Instruction may allocate these funds to service delivery areas which have agreements with private schools and organizations to provide educational and training services under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. These funds shall be allocated in accordance with the coordination criteria of the coordination and special services plan as provided in Section 10524 of the Unemployment Insurance Code, and according to the priority order of eligible persons for these funds as provided in Sections 15010 and 15011 of the Unemployment Insurance Code.

SEC. 1.5. Section 4532 of the Government Code is amended to read:

4532. As used in this chapter:

(a) "Block group" means the smallest area for which the United States Department of Commerce, Bureau of the Census provides data on personal income.

(b) "Urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce, Bureau of the Census in the Federal Register, Vol. 39, Number 85, for Wednesday, May 1, 1974, at pages 15202-15203 and as periodically updated.

(c) "Cluster of block groups" means one or more contiguous block groups.

(d) "Distressed" means an urbanized area, within the State of California and as identified by the Office of Planning and Research, which contains at least 3,000 people in a cluster of block groups, each of which meet at least five of the following criteria according to the most recent available census information compared to the last statewide census:

(1) The percentage of the block group's population over age 25 with less than a high school education was within the upper quartile of all block groups.

(2) The unemployment rate of the block group was within the

upper quartile of all block groups.

(3) The per capita income of the block group was within the lower quartile of all block groups.

(4) The percentage of the block group's households which were female-headed households in poverty with children present was within the upper quartile of all block groups.

(5) The percentage of the block group's population over 65 who were in poverty was within the upper quartile of all block groups.

(6) The percentage of the block group's households with more than 1.01 persons per room was within the upper quartile of all block groups.

(7) The percentage of the block group's population younger than 18 who were in poverty was within the upper quartile of all block groups.

(8) The percentage of the block group's population who were nonwhite or hispanic was within the upper quartile of all block groups.

(e) "Approved special census" means a special census approved by the Population Research Unit of the Department of Finance.

(f) "Person with high risk of unemployment" means a person who:

(1) As a member of one of the eligible groups defined in Section 321 of Public Law 95-600, qualifies an employer who hires him or her for the Targeted Jobs Tax Credit. These groups are: economically disadvantaged youth, economically disadvantaged Vietnam-era veterans, economically disadvantaged ex-convicts, vocational rehabilitation referrals, youth participating in a qualified cooperative education program, recipients of supplemental security income benefits under Title XVI of the Social Security Act, and general assistance recipients.

(2) Would have qualified an employer hiring him or her for the Work Incentive/Welfare Tax Credit authorized by Section 322 of Public Law 95-600. These persons include applicants and recipients of aid to families with dependent children who would have registered for the Work Incentive Program, and aid to families with dependent children recipients who have been receiving welfare for at least 90 days.

(g) "Poverty" means the poverty level, as defined by the United States Department of Commerce, Bureau of the Census in the Federal Register, Volume 43, Number 87, for Thursday May 4, 1978, at pages 19260–19269, and as periodically updated.

SEC. 2. Section 4799.10 of the Public Resources Code is amended to read:

4799.10. (a) The department may implement a program in urban forestry to encourage better tree management and planting in urban areas, to assist the cities in seeking innovative solutions to problems such as tree maintenance and vandalism, to encourage demonstration projects to maximize the benefits of urban forests, and to otherwise accomplish the purposes of this chapter.

The department shall assume the primary responsibility in carrying out the intent of this chapter in cooperation with other private and public entities or persons and appropriate local, state, and federal agencies such as the Cooperative Extension, the Department of Parks and Recreation, the Department of Transportation, resource conservation districts, and the United States Forest Service.

(b) The department shall be the agent of the state and shall have full power to cooperate with those agencies of the federal government which have powers and duties concerning urban forestry, and shall perform all things necessary to secure for this state the benefits of federal urban forestry programs.

To facilitate implementation of this chapter, the director may enter into agreements and contracts with any public or private organization including local agencies having forestry-related jurisdictional responsibilities and established and operating urban forestry programs. The director shall consult with those agencies when carrying out this chapter in their respective areas.

(c) The director shall take all steps necessary to prevent or retard the introduction, establishment, and spread of the Dutch elm disease including the detection and removal of infected and high-hazard elm trees.

(d) The director may enter into agreements with any local agency to prevent or retard the introduction, establishment, and spread of the eucalyptus longhorn borer and pine pitch canker, including the detection and removal of infected and high-hazard eucalyptus and pine trees. The agreements shall assure that the department will not need additional funds to participate in the program.

(e) The department and the Department of Food and Agriculture shall cooperate in setting quarantine boundary lines and in enforcing the provisions relating to quarantine and pest abatement contained in Division 4 (commencing with Section 5001) of the Food and Agricultural Code when a quarantine is established with regard to the Dutch elm disease.

(f) The department may use available recipients of the Aid to Families with Dependent Children or General Assistance Program who are participating in state or county work experience programs for carrying out the purposes of this chapter. The participation of registrants for the Greater Avenues of Independence program, under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, shall be consistent with their participant contract requirements. Persons being used by the department pursuant to this subdivision shall not be in the same crew as persons being used pursuant to subdivision (g).

(g) Whenever it is feasible to do so, the department may utilize inmates and wards assigned to conservation camps in implementing this chapter.

SEC. 3. Section 11308 of the Welfare and Institutions Code is

repealed.

SEC. 4. Section 11310 of the Welfare and Institutions Code, as amended by Section 1 of Chapter 77 of the Statutes of 1989, is amended to read:

11310. (a) Except as provided in subdivision (b), every individual, as a condition for eligibility for aid under this chapter, shall register for manpower services, training, and employment.

(b) The following individuals are not required to register:

(1) An individual under 16 years.

(2) A child attending an elementary, secondary, vocational, or technical school on a full-time basis. A person who is 16 or 17 years of age, or a person described in subdivision (d) who loses this exemption, shall not requalify for the exemption by attending school as a required activity under the Greater Avenues for Independence program. For purposes of this subdivision, school does not include postsecondary education.

(3) An individual who is ill, incapacitated, or of advanced age.

(4) An individual so remote from a program activity that his or her effective participation is precluded.

(5) An individual whose presence in the home is required because of illness or incapacity of another member of the household.

(6) A parent or other relative who meets the criteria described in subparagraph (A) or (B).

(A) Has primary responsibility for personally providing care to a child under the age of three years. An individual meeting this criterium who volunteers to register may not be required to participate unless it is guaranteed that: (1) child care will be provided and (2) participation will not be required for more than 20 hours per week.

(B) Has primary responsibility for personally providing care to a child aged three to five years, inclusive, unless it is guaranteed that: (1) child care will be provided and (2) participation will not be required for more than 20 hours per week.

(C) In a family eligible for Aid to Families with Dependent Children payments due to the unemployment of the principal wage earner, the exemption criteria contained in subparagraph (A) or (B) shall be applied to only one parent.

(7) A woman who is pregnant and it has been medically verified that the anticipated delivery date is the month of required participation or is within the six-month period immediately following the month of required participation.

(8) An individual who is working not less than 30 hours per week in unsubsidized employment which is expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment which is expected to last no longer than 10 working days.

(9) An individual who is a full-time volunteer serving under the Volunteers in Service to America (VISTA) program, pursuant to Title 1 of the federal Domestic Volunteer Service Act of 1973 (P.L.

93-113).

(c) Any individual not required to register may choose to register voluntarily for manpower services, training, and employment, and may withdraw that registration at any time without loss of eligibility for aid under this chapter, if his or her status has not changed in a way which would require registration.

(d) Notwithstanding subdivision (a), a custodial parent who is under 20 years of age and who has not earned a high school diploma or its equivalent, and who is not exempt or whose only basis for exemption is subparagraph (A) of paragraph (6) of subdivision (b), shall be required to register solely for the purpose of earning a high school diploma or its equivalent.

(1) Nothwithstanding subparagraph (B) of paragraph (6) of subdivision (b), full-time participation shall be required of the parent.

(2) Paragraph (7) of subdivision (c) of Section 11325.2 shall apply to a custodial parent who is 18 or 19 years of age who is required to participate under this article. Any referral pursuant to a progress evaluation conference that results in an assignment to any training or work activity shall be subject to subparagraph (B) of paragraph (6) of subdivision (b).

(3) Custodial mothers under 20 years of age who have not earned a high school diploma or its equivalent shall be exempted due to incapacity as provided in paragraph (3) of subdivision (b) after the birth of the child for a period of postpartum recovery as prescribed by a physician.

(e) Notwithstanding subdivision (d), the county may determine at appraisal that participation in education activities for the purpose of earning a high school diploma or equivalent is inappropriate for an 18 or 19 year old custodial parent only if that parent is already in an education or vocational training program that is approvable as a self-initiated program as specified in paragraph (5) of subdivision (c) of Section 11325.2. If that determination is made, the parent shall be allowed to continue participation in the self-initiated program subject to paragraph (5) of subdivision (c) of Section 11325.2.

SEC. 5. Section 11310 of the Welfare and Institutions Code, as added by Section 2 of Chapter 77 of the Statutes of 1989, is repealed.

SEC. 6. Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 7. Article 3.2 (commencing with Section 11320) is added to Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 3.2. Greater Avenues For Independence Act

11320. The Legislature finds and declares that this article is intended to be a recodification and simplification of the Greater Avenues for Independence Act of 1985 (Art. 3.2 (commencing with

Section 11320), as added by Chapter 1025 of the Statutes of 1985), and should be construed as a continuation of that act except as otherwise provided. Any other provision of law referring to the Greater Avenues for Independence Act of 1985 shall be construed as referring to this article.

11320.2. (a) The Legislature finds and declares that this article is intended to be the employment and training program for the state and is intended to satisfy the registration requirement of Section 602(a)(19)(A) of Title 42 of the United States Code. The Legislature further declares that this article shall be implemented even if the requirements of the federal Social Security Act are not met.

(b) The Legislature finds and declares that the state and counties recognize all of the following:

(1) Applicants for, and recipients of, aid under this chapter desire to work, and will do so if provided with the opportunity.

(2) The state and counties shall provide applicants for, and recipients of, aid under this chapter with the opportunity to obtain employment by offering a full range of employment training and supportive services, consistent with the needs of participants, that allow for informed choices in order to meet their employment goals.

(3) Able-bodied applicants for, and recipients of, aid under this chapter, are expected to work. The timeframes for fulfilling this expectation shall be set forth in an explicit contract between an applicant or recipient and the county.

(4) Applicants for, and recipients of, aid under this chapter who are required to register for employment and training programs pursuant to Section 11310 are individuals in special need of training as described in Section 1501 of the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), individuals who require special assistance provided in Section 1533, and most in need of employment and training opportunities as described in Section 1551. The Legislature finds and declares that these individuals are in the labor force actively seeking employment.

(5) Because success of any program will depend on the state, it must exercise leadership to engender enthusiasm among counties, county welfare department directors, and county welfare department line staff, who are the principal contacts for many recipients enrolled in the program.

(6) A successful program should also be based upon all the following principles:

(A) Recipients should be able to make choices and to live up to the responsibilities involved in those choices.

(B) Participants should have an early opportunity to obtain a job.

(C) Expenditures should be targeted where they can do the most good.

(D) The state and the counties have a responsibility to provide a sufficient level of services to meet the needs of participants, as well as to undertake sufficient public information efforts to make recipients, potential participants, employers, or other public or

private entities aware of the components, opportunities, and benefits of this program.

(E) New programs should be good investments of public funds. Added costs to the system should be incurred only when they are likely to result in long-term personal and community payoff.

(7) Clients should not be placed in any unassigned pool while waiting for a scarce resource.

(8) Most types of employment and training program components for applicants for, and recipients of, aid under this chapter have been successfully tried in this state.

(9) Aid under this chapter is available to persons who meet eligibility requirements. The program provided for in this article should not hamper continuation of this state's existing system of fraud detection, one of the most successful in the nation.

11320.4. (a) Every applicant for, or recipient of, aid under this chapter who is required to register for employment and training programs pursuant to Section 11310 shall be required to register under this article with the county welfare department. Any applicant for, or recipient of, aid under this chapter who is not required to participate under this article may volunteer to participate in the program.

(b) Any person required to register under this article with the county welfare department who refuses to register shall be subject to the procedures provided for in Sections 11327.4 and 11327.5.

(c) (1) Any AFDC applicant or recipient who is a member of, and who lives within the designated service area of, any Indian tribe operating a job opportunities and basic skills training program approved by the federal Department of Health and Human Services under the federal Family Support Act of 1988 (P.L. 100-485) shall, if required pursuant to a tribe's approved operating plan, participate in the program in place of participation pursuant to this article.

(2) If an individual refuses or fails to comply with program requirements without good cause, and conciliation efforts as specified in Section 11327.4 have failed to resolve the dispute, Section 11327.5 shall apply.

11320.6. (a) County welfare departments shall administer this article in a manner consistent with this chapter and regulations adopted by the department in order to implement this chapter.

(b) Each county welfare department, with the cooperation of community college districts, county offices of education, and local private industry councils established under Chapter 4 (commencing with Section 15030) of Division 8 of the Unemployment Insurance Code, shall maintain with the department a county plan that describes a package of services to be provided to participants receiving services under this article, and that reflects available resources and local job market needs. A joint plan may be maintained by two or more consenting counties.

(c) Each county plan shall include a participant and labor market needs assessment, to be revised annually, which shall specify all of

the following:

(1) The full employment goal of the plan, which shall be the provision of unsubsidized employment for all county registrants subject to this article.

(2) An assessment of the county's current and projected unsubsidized employment needs.

(3) An inventory of services, including those specified in Section 11322.6, available to county residents.

(4) The amount and kind of services required to meet the full employment goal for all registrants.

(5) The amount and kind of services that will be used in the plan year.

(6) An assessment of what services are currently unavailable and needed, including child care services, to meet the full employment goal and a plan for developing the availability of these services within a reasonable period of time, including a proposed program budget.

(d) If services are not available in the county, the county plan may include provisions for the purchase of services from other counties.

(e) Any county in which there is an Indian tribe which operates a job opportunities and basic skills training program approved by the federal Department of Health and Human Services under the federal Family Support Act of 1988 (P.L. 100-485) shall do all of the following:

(1) (A) Provide the tribe or tribes with information on adult tribal AFDC recipients needed to determine the eligible tribal population and to define the designated service area.

(B) The confidentiality standards of Chapter 5 (commencing with Section 10850) shall apply to this paragraph.

(2) Determine the eligibility of tribal members for AFDC in accordance with Chapter 2 (commencing with Section 11250).

(3) Refer all AFDC applicants and recipients who are tribal members to the tribe's education, training, and work program.

(4) Impose financial sanctions in accordance with Section 11327.5.

(5) Provide child care referrals and payments, including transitional child care, in accordance with Chapter 2 (commencing with Section 11250).

(6) Enter into any agreements necessary to carry out the activities specified in this subdivision.

11320.8. (a) Each county plan shall contain a methodology for the provision of job services, training and education, case management activities, and supportive services to program participants. This methodology shall specify how county welfare departments will cooperate with, and maximize the use of, education, child care, resource and referral agencies, job service, and other appropriate local service providers. To the extent existing programs are available to county residents, each county plan shall specify the manner in which these programs shall be utilized to provide services specified in this article. The county may provide services directly to program participants or enter into interagency

agreements or contracts with private or public agencies for the provision of these services.

(b) Each county shall specify in its plan its target groups and the choices that shall be made available to each target group, pursuant to Section 11321.4. The county shall make available all of its programs to each target group, but may give priorities for certain programs to groups for whom these programs are reasonably expected to be the most effective.

(c) Each county welfare department shall afford any local private industry councils, local legal aid and welfare rights representatives, and local housing authorities responsible for administering public housing programs an opportunity for prior review and comment on county plan updates and revisions. When submitted to the state department for approval, each county plan shall be accompanied by a letter from the private industry council, or councils in a multiservice delivery area county, certifying the level of local coordination including joint planning and the use of local labor market information.

11321. The board of supervisors shall approve the county plan, or any significant changes or revisions to that plan. In approving the county plan, the board of supervisors shall consider the views presented by affected groups during, and as part of the record of, the public hearing in accordance with existing county public hearing procedures.

11321.2. (a) No plan, or revision of a plan, may be implemented unless approved by the department. In determining whether a plan should be approved, the department shall consider the projected long-range cost-effectiveness of the plan, in addition to the appropriateness of the services proposed to be delivered under the plan, given the local labor market, maximum utilization of existing and generic services, and administrative ease.

(b) Every plan approved by the department shall provide an adequate range of services as described in Sections 11322.6 to 11323.2, inclusive. With respect to large counties, as defined by the department for cost control purposes, "an adequate range of services" means that the counties shall provide all of the services outlined in those sections.

(c) If a joint plan submitted by two or more counties serves a participant caseload equal to or greater than a large county, the plan shall provide for all of the services outlined in Sections 11322.6 to 11323.2, inclusive, unless shown to be unnecessary by the county. No plan shall require job search and work experience of participants to the exclusion of a range of services, both existing and proposed, to be offered participants, in accordance with this section.

11321.4. (a) Each county welfare department shall, in providing services to participants under this article, provide services to each participant which will best meet his or her needs. Services to be provided to each participant shall be specified in the contract entered into between the county welfare department and the

participant pursuant to this article. In developing each contract, the county shall take into consideration the specific target groups in the county, the availability of resources identified pursuant to Section 11320.8, and the choices which shall be made available to each group as required by this article.

(b) Priority in providing expensive services and services which must be provided for a lengthy period of time shall be given to persons who have been recipients of aid under this chapter for at least two years or who have little or no employment history. These individuals shall be given priority in receiving services such as supported work, as provided for in subdivision (g) of Section 11322.8, and lengthy classroom training.

(c) Program participants who have been recipients of aid under this chapter for less than two years and who have a history of employment shall be provided with less costly services and short-term services, unless a determination is made that these types of services would not be effective in assisting a program participant to achieve the ultimate goal of obtaining unsubsidized employment.

11321.6. (a) A county plan may provide that the program provided for in this article shall apply to recipients of aid under Part 5 (commencing with Section 17000), except that no funds appropriated for purposes of this article shall be utilized for purposes of applying this article to these individuals.

(b) A county plan may also provide that the program provided for in this article shall apply to refugees receiving Refugee Cash Assistance.

(c) The county shall maintain separate accounting records of expenditures related to applicants for, and recipients of, aid under this chapter, and for the individuals to whom the program applies pursuant to subdivisions (a) and (b). If a county elects to apply the program provided for in this article to refugees receiving Refugee Cash Assistance or to refugee recipients of aid under Part 5 (commencing with Section 17000), costs of applying the program shall be funded from the county's federal social services and targeted assistance allocation as provided for under Chapter 5.5 (commencing with Section 13275).

(d) If, pursuant to subdivision (a), a county elects to apply the program provided for in this article to refugees or to recipients of aid under Part 5 (commencing with Section 17000), these individuals shall have the same rights, duties, and responsibilities that a participant has who is an applicant for, or a recipient of, aid under this chapter. Any participation by general assistance recipients shall not constitute any actual or implied responsibility for, or assumption of, costs of general assistance by the state.

11321.8. (a) The department shall approve a county plan within a reasonable period of time after submission of the county plan.

(b) A county may incorporate into its plan any existing employment or training program for applicants for, or recipients of, aid under this chapter which is operating in the county to the extent

that the program is consistent with this article.

11322. (a) The county welfare department shall submit to the department a program budget proposal in conjunction with the administrative cost control plan for Aid to Families with Dependent Children, Medi-Cal, and Food Stamp programs. The budget proposal shall specify the costs associated with providing the range of services included in the county plan in the most cost-effective manner. The budget proposal shall identify the amount of funds expected to be spent for each component and shall provide supporting detail regarding the caseloads anticipated in each component and the amount to be spent for (1) county employees, by classification, (2) administrative support and overhead, and (3) contracted services and support.

(b) Prior to final approval of the county's budget proposal, the department shall notify each county of the amount of its allocation of funds to carry out the plan and the assumptions used to develop that allocation. If the allocation is less than the amount of funds that the county proposed in the program budget, the department shall notify the county that the proposed program budget exceeds the funds available. The department shall specify how the costs proposed by the county exceed the costs used to develop the county's allocation. The county may provide any additional documentation to justify the higher funding level. If, after reviewing the additional information, the department finds that the proposed program costs are not reasonable or cost-effective, the county shall submit the necessary revisions to its program budget to keep program expenditures within the amount of its allocation.

11322.2. (a) Counties shall continually monitor their program expenditures throughout the fiscal year. If a county determines that its anticipated expenditures will exceed the amount of that year's allocations as a result of an unexpected event, including caseload increases, court cases, or significant justifiable increases in component costs, the county shall immediately notify the department and submit a revised plan.

(b) Counties shall achieve cost reductions pursuant to a revised plan required by subdivision (a), primarily by reducing the number of participants in the program in a manner consistent with Section 11322.4. Counties may make program efficiencies to the extent those reductions do not threaten the guarantee of services as required by subdivision (b) of Section 11321.2. In its review, the department shall ensure that any efficiencies do not create an effective barrier to participation on the part of current or future clients.

11322.4. (a) In determining which clients shall receive services, counties shall give existing participants highest priority. If resources are not sufficient to serve all existing participants, the county shall temporarily exclude clients from participation in the following order:

(1) Participants who are not members of the target population.

(2) Participants who are members of the target population who do not volunteer for program services.

(3) Participants who are members of the target population who volunteer to receive program services.

(b) If funds are sufficient to serve all existing participants, priority for intake shall be extended to new program registrants according to the following list in descending order:

(1) Members of the target population who are required to register under this article and who volunteer to receive GAIN services.

(2) Members of the target population who are exempt from the requirement to register under this article and who volunteer to receive GAIN services.

(3) AFDC applicants and recipients who are required to register under this article and who are members of the target population who do not volunteer to receive program services.

(4) Recipients of AFDC who are not members of the target population.

(5) Applicants for AFDC who are not members of the target population.

(c) The number of years, in whole year increments, each individual has received AFDC during the immediately preceding two year period shall determine which individuals shall receive the highest priority in the categories described in paragraphs (4) and (5) of subdivision (b), with those who received AFDC during the greatest amount of time receiving the highest priority.

(d) Target population means a group composed of all or any of the following groups of individuals:

(1) Individuals applying for AFDC aid who have received AFDC aid for 36 of the 60 months immediately preceding the most recent month for which application has been made.

(2) Individuals receiving AFDC aid who have received AFDC aid for any 36 of the preceding 60 months.

(3) Custodial parents under the age of 24 who had little or no work experience in the preceding year.

(4) Custodial parents under the age of 24 who have not completed a high school education and are not enrolled in high school, or in a high school equivalency course of instruction.

(5) Members of a family in which the youngest child is within two years of being ineligible for AFDC because of age.

(e) For the purposes of this section, "volunteer" means any person eligible to participate in the program, either exempt or mandatory, who expresses a desire to participate.

11322.6. As provided in the contract entered into between the county welfare department and the participant pursuant to this article, job services shall include, but not be limited to, all of the following:

(a) Job club, which shall consist of both of the following:

(1) Job search workshops. These job search workshops shall be group training sessions where participants learn various job finding skills, including training in basic job seeking skills, job development skills, job interviewing skills, understanding employer requirements

and expectations, and how to enhance self-esteem, self-image, and confidence.

(2) Supervised job search, which shall include, but not be limited to, access to phone banks in a clean and well-lighted place, job orders, direct referrals to employers, or other organized methods of seeking work which are overseen, reviewed, and criticized by a trained employment professional. The amount and type of activity required during this supervised job search period shall be determined by the county and the participant, based on the participant's employment history and need for supportive services, and shall be consistent with regulations developed by the department.

(b) Unsupervised job search. The individual shall seek work in his or her own way, and make periodic progress reports no less frequently than every two weeks to the county welfare department or the agency contracting with that department.

(c) Job placement, which shall include, but not be limited to, referrals to jobs listed by employers with the State Job Service.

(d) Job development, which shall be active assistance in seeking employment provided to a participant by a trained employment professional on a one-to-one basis.

(e) Employment counseling, which shall be counseling aimed at helping a person reach an informed decision on an appropriate employment goal.

(f) (1) Individuals may be required to participate in job search activities from the date of application for aid for an initial period of up to eight consecutive weeks. Following the initial period, an individual may be required to participate in additional job search activities not in excess of 40 days in any period of 12 consecutive months.

(2) Job search activities may be required in excess of the limits specified in paragraph (1) only as part of another education, training, or employment activity.

(3) This subdivision is intended to implement the limitations contained in the Family Support Act of 1988 (P.L. 100-485), and shall not be construed to permit job search activities that are not specifically provided for elsewhere in this article.

11322.8. As provided in the contract entered into between the county welfare department and the participant pursuant to this article, training and education services include, but are not limited to, all of the following:

(a) Job training, which shall include, but is not limited to, training in employer-specific job skills in a classroom or onsite setting, including training provided by local private industry council programs and community colleges.

(1) Payments to an employer for on-the-job training shall not exceed an average of 50 percent of the wages paid by the employer to the participant during the period of on-the-job training.

(2) A participant in on-the-job training shall be compensated by the employer at the same rates, including benefits and periodic

increases as similarly situated employees or trainees, but not less than the higher of federal or state minimum wages.

(b) Preemployment preparation, which shall be work for a public or nonprofit agency that provides the participant with either of the following:

(1) Basic preemployment preparation, which shall provide work behavior skills and a reference for future unsubsidized employment.

(2) Advanced preemployment preparation, which shall provide on-the-job enhancement of existing participant skills in a position related to a participant's experience, training, or education acquired as a result of the services funded pursuant to a contract entered into pursuant to this article.

A short-term preemployment preparation assignment shall be for not longer than three months, and may be provided as a preparation for other education and training services as a part of the contract amendments pursuant to Sections 11325.4 to 11326.4, inclusive. A long-term preemployment preparation assignment shall not exceed one year.

(3) Except for persons subject to paragraph (4), the number of hours a person participates in a preemployment preparation program shall be determined by dividing his or her aid grant under this chapter, less any child support paid to the county, by the average hourly wage for all job openings received by the Employment Development Department. The average hourly wage shall be updated annually every July 1. No preemployment preparation assignment shall exceed 32 hours per week.

(4) If a person participates in a preemployment preparation assignment for nine months, the number of hours that person is required to participate shall be recomputed by the county welfare department. Beginning in the 10th month, the number of hours of preemployment preparation shall be determined by dividing a person's aid grant under this chapter, less any child support paid to the county, by the prevailing rate of pay for the same or similar job at the site to which the person is assigned. In no case shall the prevailing rate of pay fall below the average hourly wage for job openings received by the Employment Developement Department, as provided in paragraph (3). No preemployment preparation assignment shall exceed 32 hours per week.

(c) Adult basic education, which shall be preemployment basic education, including reading, writing, and arithmetic necessary for employment or job training, including high school proficiency.

(d) College and community college education, when that education provides sufficient employment skills training that can reasonably be expected to lead to employment.

(e) Vocational English-as-a-second-language which shall be intensive instruction in English for non-English speaking participants, coordinated with specific job training.

(f) Grant diversion, which means public or private sector employment or on-the-job training at comparable wage rates, in

which the recipient's cash grant, or a portion thereof, or the welfare grant savings from employment, is diverted to the employer as a wage subsidy, subsequent to the payment of wages to the participant.

(g) Supported work or transitional employment, which mean forms of grant diversion in which the recipient's cash grant, or a portion thereof, or the welfare grant savings from employment, is diverted to an intermediary service provider, subsequent to the payment of wages to the participant.

(h) Grant diversion, supported work, and transitional employment projects shall be administered so that:

(1) The recipient shall not receive less disposable income than if he or she had not participated in the project. "Disposable income" means the income available to the recipient by adding the aid payment acquired pursuant to this chapter and earnings from the grant diversion project and subtracting the allowable employment related expenses.

(2) The grant, a portion of the grant, or the estimated savings due to the earnings from a grant diversion project may be diverted into a special fund created by the county welfare department for this purpose. An employer may be reimbursed from the special fund pursuant to a contract developed by the county welfare department or the service delivery area with the employer.

(3) The county shall obtain agreements with employers that participants will be employed upon successful completion of the grant diversion, supported work, or transitional employment period in any related job openings, subject to the following provisions:

(A) Employers shall not discriminate against participants on the basis of race, sex, national origin, age, or disability.

(B) Except as provided in subdivisions (c) and (d) of Section 11327.5, there shall be no interruption in receipt of income, whether wages from the employer or aid payments by the department, caused by an employer's conduct.

(4) No grant diversion, supported work, or transitional employment program shall be implemented under this article until a plan for such a program is approved by the department. No plan for grant diversion, supported work, or transitional employment programs shall be approved if the plan would jeopardize federal financial participation. Standards established by the department for purposes of these programs shall not preclude a significant portion of recipients from participation.

(5) A plan submitted under paragraph (4) shall include provisions for immediate reissuance to the recipient of any grant or portion of a grant paid to an employer or intermediary, which has been lost due to fraud, malfeasance, or theft on the part of the employer or intermediary. This plan shall also include provisions for reissuance to the recipient of any grant or portion of a grant paid to an employer or intermediary, when the recipient is determined to have had good cause for declining to participate pursuant to Section 11328. In the event that funds are lost due to fraud, malfeasance, or theft by an

employer, the county shall initiate an action to recover from the employer or intermediary any of those funds.

(6) To the extent required by federal law, a participant may not be assigned to fill any established unfilled position as part of a grant diversion, supported work, or transitional employment program.

11323. (a) Whenever a plan entered into pursuant to this article provides for the use of education services provided for in Section 11325.4, utilization of each education program component shall not exceed two academic years.

(b) Participants referred to education services described in subdivisions (c) and (e) of Section 11322.8 shall receive at least 10 hours of instruction during each week that participation is required, if available. Counties shall notify the department when they are unable to provide the minimum hours of instruction. Upon notification, the department shall work with the State Department of Education and California community colleges to secure funding so that a county can provide the minimum level of instructional time. The department also shall notify the Joint Legislative Oversight Committee on GAIN Implementation of any instance where a county is unable to provide the minimum hours of instruction time to participants. The department shall identify the school district or community college district and the factors leading to the inability of that school or college to provide the minimum hours of instruction time.

11323.1. (a) (1) A county welfare department may, as part of the county plan required pursuant to Sections 11320.6 and 11320.8, include a training component in which persons participating under this article receive training in business development and self-employment as an option under Sections 11320.8 and 11322.8. As part of the county plan, the county shall provide a statement of need for such a training component in that county.

(2) (A) Where appropriate, the county welfare department shall refer the participants to a training agency based on the assessment required by Section 11325.4.

(B) The county welfare department shall approve and monitor the training program.

(b) (1) Persons participating pursuant to this article who indicate a desire to participate in a training component provided for pursuant to subdivision (a) shall be carefully assessed for self-employment skills or other relevant skills and aptitude by the training agency, and a determination shall be made as to whether the individual has the potential to become successfully self-employed or obtain employment in the child care field.

(2) The assessment made pursuant to paragraph (1) shall include an evaluation of the viability and likelihood of success of the individual's business idea or plan.

(3) An assessment made pursuant to paragraph (1) shall not discriminate against individuals on the basis of age, gender, or ethnic origin.

(4) If the training agency determines that the program is not suitable for a potential participant, the training agency shall notify the county in writing of the reasons for that determination.

(5) All rights and responsibilities prescribed by Sections 11324.8 to 11327, inclusive, shall apply to all parties participating in the training component.

(c) Participants in the training program shall reflect, to the extent possible, the ethnic, gender, and age characteristics of the population of participants under this article in the county.

(d) (1) The training shall consist of all of the following:

(A) Development and evaluation of business plans.

(B) Capitalization of small businesses.

(C) Marketing strategies.

(D) Business location analysis.

(E) Direct technical assistance in the development of a small business.

(F) Other subjects necessary to achieve proficiency in basic business skills, such as minor bookkeeping, necessary to successfully operate a small business.

(2) (A) In developing the training, the training agency shall specify what type of direct technical assistance will be provided to participants to aid in the development and continuing success of a small business.

(B) The technical assistance shall include, but need not be limited to, business counseling and assistance in applying for loans necessary to operate a small business.

(e) (1) Funding for the programs implemented pursuant to this section shall come from the Budget Act appropriation for the implementation of this article.

(2) When training under this section is conducted by a community college district, reimbursement shall be provided to the district through the regular reimbursement process for the Greater Avenues for Independence program.

(f) Those participants who require a capitalization loan shall apply for the loan before the conclusion of the technical assistance period.

(g) For purposes of this section, the contract amendment required in subdivision (b) of Section 11325.4 shall specify the activity to which an individual shall be reassigned if he or she does not obtain a capitalization loan within 120 days of applying for the loan, or, with good cause, does not complete the training provided for in this section, or he or she fails to obtain self-employment or other unsubsidized employment within 180 days of the completion of the training period including technical assistance.

(h) (1) (A) Notwithstanding Section 11328.8, for the purposes of this section, the training provider shall be reimbursed up to 70 percent of the fixed unit price of the training costs, upon the participant's successful completion of the training program, including technical assistance.

(B) Completion of training of those participants who apply for a capitalization loan shall be deemed to occur upon completion of classroom training and application for a loan.

(2) At least 30 percent of the fixed unit price for the training provided under this section shall be withheld, and progress payments shall be made from that withheld portion upon evidence of self-employment or employment for 30, 90, and 180 days.

(3) For purposes of this subdivision, the department shall define acceptable evidence of self-employment.

(i) The training provider shall be reimbursed a pro rata share of the 70 percent payment if the participant fails to complete the training.

(j) Training in child care shall be conducted by training agencies which have an existing child development program.

(k) (1) In order to enhance the success of the training component authorized by this section, the department shall explore the feasibility of excluding from participants' income and resources for eligibility and grant purposes, certain business expenses and resources of participants who have completed the self-employment and business development training pursuant to this section and who have started a business. The department shall consult with county welfare departments and training agencies in exploring these exclusions.

(2) At a minimum, the department shall consider the following exclusions:

(A) The exclusion of a vehicle used for self-employment purposes from available resources.

(B) The exclusion of cash reserves reinvested into the participant's business from available resources.

(C) The deduction of transportation cost, inventory, and raw material costs from income.

(D) The exclusion of capital expenditures from available resources.

(E) The deduction of loan payments from income.

(*l*) For purposes of this section, "training agency" means any agency with an established training program in self-employment, entrepreneurship, or business development and which agrees to participate pursuant to this section and includes, but is not limited to, a community college or private agency.

11323.15. A county plan, with the approval of the director, may also provide for concurrent enrollment of participants in any program components provided in Sections 11322.6 and 11322.8 which have been requested by the participant at the orientation and appraisal interview provided in Section 11325.2. Notwithstanding paragraphs (2), (3), and (4) of subdivision (c) of Section 11325.2, participation in job search or job club shall not be required prior to assignment to concurrent enrollment if the county determines the participant lacks basic skills, language skills, or employment skills necessary to be employed in the local labor market on jobs that do

not result in net loss of income, as provided in subdivision (k) of Section 11328. For purposes of Sections 11327.4 and 11327.5, basic education as described in paragraph (6) of subdivision (c) of Section 11325.2 shall be considered the primary program component. It is the intent of the Legislature that concurrent enrollment plans approved under this paragraph be designed to encourage completion of the basic education requirements of this program. The department shall compare and evaluate the effectiveness of concurrent and sequential enrollment in program components.

11323.2. Necessary supportive services shall be available to every participant in order to participate in the program activity to which he or she is assigned or to accept employment, except as otherwise provided in Section 11500. As provided in the contract entered into between the county and participant pursuant to this article, supportive services shall include, but are not limited to, all of the following:

(a) Child care. Paid child care shall be available to every participant with a dependent child in the assistance unit who needs paid child care if the child is under 13 years of age or requires child care or supervision due to a physical, mental, or developmental disability or other similar condition as verified by the county welfare department, or who is under court supervision. A child in foster care receiving benefits under Title IV-E of the federal Social Security Act (42 U.S.C.A. Sec. 670 et seq.) or a child who would become a dependent child except for the receipt of federal Supplemental Security Income benefits pursuant to Title XVI of the federal Social Security Act (42 U.S.C.A. Sec. 1381 et seq.) shall be deemed to be a dependant child for the purposes of this subdivision.

(b) Transportation costs.

(c) Ancillary expenses, which shall include the cost of books, tools, clothing, fees, and other necessary costs.

(d) Personal counseling. A participant who has personal or family problems that would affect the outcome of the employment plan entered into pursuant to this article shall, to the extent available, receive necessary counseling or therapy to help him or her and his or her family adjust to his or her job or training assignment.

11323.4. (a) Payments for supportive services, as described in Section 11323.2, shall be advanced to the participant, wherever necessary, and when desired by the participant, so that the participant need not use his or her funds to pay for these services.

(b) The county welfare department shall take all reasonable steps necessary to promptly correct any overpayment or underpayment of supportive services payments to a recipient or a service provider, including, but not limited to, all cases involving fraud and abuse, consistent with procedures developed by the department. The department's procedures shall not jeopardize federal financial participation.

(c) Notwithstanding any other provision of this article, any participant in on-the-job training who becomes ineligible for AFDC

due to earned income, hours worked, or loss of income disregards, shall remain a participant in the GAIN program for the duration of the on-the-job training assignment and shall be eligible for supportive services during the duration of the on-the-job training. Each month of child care benefits provided pursuant to this subdivision shall reduce the number of months of transitional child care available to participants under Section 11500.

(d) (1) Participants shall be encouraged to apply for educational grants, scholarships, and awards.

(2) To the extent permitted by federal law, the county shall coordinate with financial aid offices to establish procedures whereby the educational expenses of participants are met through available financial aid and the supportive services described in Section 11323.2. These procedures shall not result in duplication of payments, and shall require determinations to be made on an individual basis to ensure that using financial assistance will not prevent the person's participation in his or her program.

(3) The department shall promulgate regulations to implement this subdivision.

11323.6. (a) The cost of support services provided under this article, including reimbursement to licensed day care providers, shall be governed by regional market rates. Participants shall be allowed to choose legal child care and the cost of that child care shall be reimbursed by counties if the cost is within the regional market rate. The regional market rate means care costing no more than 1.5 market standard deviations above the mean cost of care for that region.

(b) Reimbursement to child care providers shall not exceed the fee charged to private clients for the same service. Reimbursement shall be made at a rate lower than that charged to private clients for the same service if the child care program agrees to charge a lower fee.

(c) Reimbursement shall be made on a per month, per week, per day, or per hour basis depending upon the basis used to charge private clients for the same service.

(d) (1) For purposes of this article, regional market rates shall be determined in accordance with resource and referral programs provided for under Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code, and the Alternative Payment Program provided for under Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code. Participant plans shall include immediate referrals to local resource and referral agencies, as appropriate.

(2) Counties shall not be bound by the child care rate limits described in subdivision (a) when the care is provided in a region where there are no more than two child care providers of the type needed by the participant.

(e) (1) Day care by family members shall be encouraged, but the choice between licensed or exempt day care arrangments shall be

made by the recipient.

(2) Reimbursement shall not be made for child care services when care is provided by parents, legal guardians, or members of the assistance unit, including, but not limited to, essential persons.

(f) A child care provider located on an Indian reservation and exempted from state licensing requirements shall meet the conditions specified in Section 11324 and applicable tribal standards.

11323.8. (a) Each county may contract with public and private child care programs to provide any or all of the services specified in this section.

(b) County welfare departments shall be encouraged to contract with existing service providers for any or all child care services arrangements made pursuant to this article. If the county welfare department elects to contract with any child care provider which is also under contract with the State Department of Education, these contracts shall be consistent with, and shall not supersede, all of the following:

(1) Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code.

(2) Applicable provisions of Title 5 and Title 22 of the California Code of Regulations.

(3) Applicable State Department of Education contract provisions.

(c) In order to provide maximum choice to parents, and to ensure the availability of child care, each county shall do all of the following:

(1) Assist participants to locate child care during and after participation under this article.

(2) Allow and promote parent choice by providing flexibility in child care arrangements and establishing payment arrangements, as necessary, to meet the cost of licensed or exempt child care settings.

(3) Assist in the development of new child care capacity, where needed.

(4) Provide for the continuity of child care during the participant's postprogram transition period consistent with Section 11500.

(5) Provide services to meet the child care needs of all dependent children in the participant's family, pursuant to subdivision (a) of Section 11323.2.

(6) Provide child care to participants whose program demands flexible hours of care including evening, weekends, and split shifts.

(7) To the extent possible provide for transportation of children from school to care, if reasonable and necessary.

(d) Resource and referral programs, as specified in subdivision (d) of Section 11323.6, shall assist the county welfare departments to determine the child care needs of program participants, provide them with a listing of available child care services in the service area, and facilitate the efforts of county welfare departments, school districts, local child care providers and parent groups for the expansion of child care services.

11324. If the county welfare department or a contractor pays for child care services which are exempt from licensure, all of the following information about the care giver shall be on file with the county welfare department or the contractor and shall be made available to the participant:

(a) The name and address of the care provider.

(b) The address where care is to be provided.

(c) The hours care is to be provided and the charge for this care.

(d) The names, addresses, and telephone numbers of two character references.

(e) A copy of a valid California driver's license or other identification to establish that the care giver is at least 18 years old.

(f) A statement from the caregiver as to his or her health education, experience or other qualification, criminal record, and names and ages of other persons in the home or providing care.

11324.2. A preemployment preparation position utilized pursuant to this article may not be created as the result of, or may not result in, any of the following:

(a) Displacement of current employees, including overtime currently worked by these employees.

(b) The filling of established unfilled positions, unless the positions are unfunded in a public agency budget.

(c) The filling of positions which would otherwise be promotional opportunities for current employees.

(d) The filling of a position, prior to compliance with applicable personnel procedures or provisions of collective bargaining agreements.

(e) The filling of a position created by termination, layoff, or reduction in workforce.

(f) The filling of a work assignment customarily performed by a worker in a job classification within a recognized collective bargaining unit in that specific worksite, or the filling of a work assignment in any bargaining unit in which funded positions are vacant or in which regular employees are on layoffs.

(g) A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between employees and employers.

11324.4. The sponsor of a preemployment preparation assignment shall assist and encourage qualified preemployment preparation participants to compete for job openings occurring within the sponsor's organization for which they qualify.

Workers assigned to public agencies shall be allowed to participate in classified service examinations equivalent to the positions they occupy, as well as all open and promotional examinations for which experience in the position or other relevant experience is qualifying under merit system rules. Time worked in the preemployment preparation positions shall apply toward seniority in the merit public agency positions.

11324.6. Any employment or training program position created

pursuant to this article, other than a preemployment preparation position, may not be created as a result of, or may not result in, any of the following:

(a) Displacement of current employees, including overtime currently worked by these employees.

(b) The filling of positions which would otherwise be promotional opportunities for current employees.

(c) The filling of a position, prior to compliance with applicable personnel procedures or provisions of collective bargaining agreements.

(d) The filling of a position created by termination, layoff, or reduction in workforce, caused by the employer's intent to fill the position with a subsidized position pursuant to this article.

(e) A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between employees and employers.

11324.8. (a) At the time an individual applies for aid under this chapter, or at the time a recipient's eligibility for aid is determined, the county shall do all of the following:

(1) Provide the individual, in writing and orally as necessary, with at least the following program information:

(A) A general description of the education, employment, and training opportunities and the supportive services available, including transitional benefits.

(B) A description of the exemptions from required participation provided under this article and the consequences of a refusal to participate in program components, if not exempt.

(C) A description of the responsibility of the participant to cooperate in establishing paternity and enforcing child support obligations, and to assist individuals in establishing paternity and obtaining child support as a condition of eligibility.

(2) Determine whether the individual is required to register for the program provided under this article.

At the time the determination is made, any individual who is deemed to be required to register under this article shall immediately register with the county welfare department.

(b) At the time an individual registers pursuant to this article, he or she shall receive a written preliminary determination that he or she is a member of a targeted group, for purposes of the federal Targeted Jobs Tax Credit and the California Jobs Tax Credit. With respect to any person required to register under this article, registration pursuant to this section shall be a condition of eligibility for aid under this chapter, except that any delay in registration due to circumstances beyond the control of the individual shall not adversely affect his or her eligibility for aid under this chapter.

(c) The recipient may appeal a determination that he or she is required to register under this article or sign a basic contract pursuant to Section 11325.2, through the procedures set forth in Chapter 7 (commencing with Section 10950) of Part 2.

(d) Persons not required to register may volunteer to participate.

(e) An applicant for, or a recipient of, aid who is dissatisfied with the terms of the basic contract may seek redress through conciliation, as described in Section 11327.4.

(f) (1) In accordance with procedures specified by the department, the county shall allow individuals to express their desire to participate in the program and provide instructions on how to enter the program.

(2) Notwithstanding paragraph (1), an indication of preference not to participate shall not exempt individuals required to register for the program from participation in the program.

11325. Unless otherwise exempt, the following persons shall not be required to participate in program components, beyond registration, until the county welfare department determines that the situation not requiring participation no longer exists:

(a) (1) Any person who, at the time of initial appraisal, is enrolled on a full-time basis in a program leading to a degree or certificate. If the individual is attending less than full time at the time of initial appraisal, but he or she agrees to full-time attendance as soon as possible, the individual shall be considered to be attending on a full-time basis.

(2) Any person subject to this subdivision shall participate on a full-time basis and make satisfactory progress in that program according to the standards of the provider.

(3) A person may participate on a basis of less than full time, but not less than a half-time basis, if full-time participation is not feasible due to good cause, as defined in Section 11328.

(b) A person who is so seriously dependent upon alcohol or drugs that work or training is precluded.

(c) A person who is having an emotional or mental problem that precludes participation.

(d) A person who is involved in legal difficulties, such as court-maintained appearances, which preclude participation.

(e) A person who does not have the legal right to work in the United States.

(f) A person who has a severe family crisis.

(g) A person who is in good standing in a union which controls referrals and hiring in the occupation.

(h) A person who is temporarily laid off from a job with a definite call-back date.

(i) A person who is employed for 15 or more hours per week.

(j) A person, or a family member, has a medically verified illness.

(k) A parent or other adult relative caring for a child, if the parent or other adult relative meets all of the following requirements:

(1) The other parent or other adult relative is in the home.

(2) The other parent or other adult relative is not excluded by paragraph (1), (2), (3), (4), or (5) of subdivision (b) of Section 11310.

(3) The other parent or other adult relative has not failed to

register, as required by Section 11310.

(*l*) A woman in the first trimester of pregnancy.

(m) A person who lacks the necessary child care for children described in subdivision (a) of Section 11323.2 or for children described in that subdivision but who are not members of the assistance unit, or a person who lacks necessary transportation.

(n) Participation of individuals who are attending a self-initiated program upon entering GAIN may be deferred in order to permit completion of the program semester, quarter, or increment of not more than six months.

The state department shall promulgate regulations that specify when the county welfare department shall determine whether an individual meets any of the criteria listed in subdivisions (a) to (n), inclusive.

For all other registrants, the county shall develop a preliminary employability plan. The plan shall, at a minimum, take into account the registrant's employment experience and his or her employment goals.

11325.2. (a) At the time an individual registers pursuant to this article, including persons who volunteer to participate, or with respect to any individual described in Section 11325, at the time the situation which permits nonparticipation no longer exists, every individual shall enter into a written basic contract with the county welfare department.

(b) The county shall offer the participant three days in which to consider and evaluate the proposed terms of the contract, or any subsequent amendments to the contract.

(c) The contract shall contain all of the following:

(1) The contract shall be written in clear and understandable language, and have a simple and easy-to-read format. The contract shall contain at least all of the following general information:

(A) A general description of the program provided for in this article.

(B) A detailed description of the services, including supportive services such as child care and transportation, available to program participants and the hours the participant is required to attend training, education, or work experience.

(C) A description of the rights, duties and responsibilities of program participants, including a list of the exemptions from required participation under this article and the consequences of a refusal to participate in program components.

(2) In the case of any participant who has not been employed within two years from the date of registration, except for a participant described in paragraph (4), the contract shall provide that the participant shall participate in job club for a period of three weeks, as defined in Section 11322.6. Participation pursuant to this paragraph may be delayed in accordance with paragraph (5) or (6).

(3) In the case of any participant who has been employed within two years of the date of registration, except for a participant

described in paragraph (4), the participant shall have the option to participate in a three-week period of job club, as defined in Section 11322.6, or in a three-week period of supervised job search, as defined in that section. At the discretion of the employment and training counselor and with the approval of the first or second line supervisor, the job search period may be shortened when it is determined that all reasonable job search efforts have been exhausted. The participant shall choose one of the options upon signing the contract. Participation pursuant to this paragraph may be delayed in accordance with paragraph (5) or (6).

(4) Notwithstanding paragraph (2) and (3), in the case of any participant who has been a recipient of aid under this chapter more than twice within three years from the date of registration, the contract shall provide for immediate referral to assessment pursuant to Section 11325.4. Participation pursuant to this paragraph may be delayed in accordance with paragraph (5) or (6).

(5) (A) Any individual who is enrolled or attending in good standing in a self-initiated vocational training program or an educational program which will likely lead to unsubsidized employment in an occupation in demand may continue to participate in that program until completion of the program for a period not to exceed two years from the date the basic contract reflecting the self-initiated program is signed. The individual's program shall be scheduled to be completed within the two-year period. The two-year period may be extended, one time only, for a period of not more than six months, on an individual basis, for persons who are unable to complete a self-initiated program due to any of the following circumstances and who have a reasonable expectation to complete that program within the six-month period:

(i) The individual's basic skills requirements required more class time than was estimated at the commencement of that individual's self-initiated program.

(ii) The school or college did not offer required classes in a sequence that permitted completion of the self-initiated program within the prescribed time period.

(iii) The individual had a personal or family crisis that resulted in the inability of that individual to complete his or her self-initiated program without an additional period of attendance, not to exceed six months.

(B) In order to continue in a self-initiated training or education program, a GAIN applicant or recipient shall need the education or training in order to become employable in unsubsidized employment. Any individual who meets either of the following criteria shall be deemed to be employable:

(i) Possesses a baccalaureate degree.

(ii) Has an education or job skills necessary to obtain unsubsidized employment in an occupation which is in demand that will provide the individual with an income equal to two times the federal proverty line for the appropriate family size. A county may waive

this requirement if an individual is able to demonstrate that, due to compelling personal circumstances, employment in the previous occupation is not realistic, including, but not limited to, a work-related disability, inability to obtain required union membership, or hours of employment that cause a severe hardship on the recipient's family.

(C) (i) Supportive services reimbursement shall be limited to child care and transportation for any participant in a self-initiated training or education program approved under this subdivision. This reimbursement shall be provided if no other source of funding for those costs is available.

(ii) Any offset to supportive services payments shall be made in accordance with subdivision (d) of Section 11323.4.

(D) (i) In order to continue in a self-initiated training or education program, a GAIN participant shall be attending at least full time and shall, make satisfactory progress, as periodically measured according to the standards of the program in which the individual is enrolled. If the individual is attending less than full time upon entry into GAIN but she or he agrees to full-time attendance as soon as possible, the individual shall be considered to be attending on a full-time basis.

(ii) A GAIN participant may participate on less than a full-time basis, but not less than on a half-time basis, if full-time participation is not feasible due to good cause, as defined in Section 11328.

(E) Participation in the self-initiated vocational or educational training program shall be reflected in the basic contract. The basic contract shall provide that whenever an individual ceases to participate in, or refuses to attend regularly, or does not maintain satisfactory progress in the self-initiated program, the individual shall participate in this program in accordance with paragraph (2), (3), or (4), whichever is applicable.

(F) Any person whose previously approved self-initiated education or training program is interrupted for reasons preventing participation may resume participation in the same program if the participant maintained good standing in the program while participating. The county shall adjust the completion date of the program accounting for the time of absence to allow the participant a cumulative total of two years participation for completion of the program. In circumstances where the break in participation was for a period of more than one year, the participant may resume the program if the county determines the previously approved self-initiated education or training program meets all other criteria of this section at the time it is resumed.

(6) For those participants who lack basic literacy or mathematics skills, a high school diploma or its equivalent, or English language skills, the basic contract shall provide for either remedial education, instruction in order to obtain a general educational development certificate, or instruction in English-as-a-second-language. These participants shall be referred to appropriate service providers,

including the educational programs operated by school districts or county offices of education that have contracted with the Superintendent of Public Instruction to provide services to participants pursuant to Section 33117.5 of the Education Code. The basic contract shall provide that when an individual, to whom this paragraph applies, fails, refuses, or ceases to comply with program requirements, without good cause, as specified in Section 11328, and conciliation efforts as specified in Section 11327.4 have failed to resolve the dispute, the individual shall be subject to the sanction provisions of Section 11327.5.

(7) An individual to whom paragraph (6) applies who is either determined at appraisal or by the education provider as unable to benefit from basic educational services due to a learning or medical problem, or is participating in the instruction and is determined not to be making satisfactory progress, shall be referred to a progress evaluation for a determination of whether the individual has the ability to successfully complete the assigned component. As part of the evaluation, counties may require an individual to take tests to obtain additional information regarding the student's learning abilities. This evaluation may result in referral, as appropriate, to any of the following components: (A) rereferral to the person's previous activity, (B) existing special programs that meet specific needs of the individual, (C) job club, if the county determines the individual has the skills needed to find a job in the local labor market, (D) assessment followed by the appropriate postassessment activity, or (E) rehabilitation assessment and subsequent training. The participant shall be involved in the decisions made during the progress evaluation and shall have appeal rights consistent with those accorded to individuals during an assessment made pursuant to subdivision (b) of Section 11325.4.

It is the intent of the Legislature that the progress evaluations provide a method for determining the appropriate services needed by an individual for long-term success in the job market. An individual who is determined to need long periods of classroom instruction in order to achieve basic skills should not be referred to a progress evaluation if he or she is making steady, satisfactory progress in attaining the basic skill goal.

(8) (A) In the case of an individual who is an applicant for aid under this chapter and who is required to register pursuant to this article, mandated activities shall be limited to those necessary to enter into a written basic contract and to participation in job search.

(B) A participant described in subparagraph (A) who is assessed as needing additional education and who chooses education in preference to job search as his or her first program component shall not be required to participate in job search until the county has approved the registrant for aid pursuant to this chapter.

11325.4. (a) A participant described in paragraph (4) of subdivision (c) of Section 11325.2, and any participant described in paragraph (2) or (3) of that subdivision who has not obtained

employment after his or her three weeks of participation in job club or supervised job search, shall work with the county welfare department to initiate the development of an employment plan. In developing the employment plan pursuant to this subdivision, the county and the participant shall develop an assessment of the skills and needs of the participant, which shall include at least all of the following:

(1) The participant's work history, including an inventory of his or her employment skills, knowledge, and abilities.

(2) The participant's educational history and present educational competency level.

(3) The participant's need for supportive services in order to obtain the greatest benefit from the employment and training services offered under this article.

(4) The employment goals of the participant, and an evaluation of the chances for the achievement of these goals given the current potential skills of the participant and the local labor market conditions.

(5) A goal to be attained upon completion of the program, including the period of time it will take to achieve this goal, and the resources available under this program for its achievement. This assessment shall be done by a person qualified by education or experience to provide counseling, guidance, assessment, or career planning. The county may contract with outside parties, including local educational agencies and service delivery areas, to provide the assessment required by this subdivision.

(b) When the county and the participant have completed the assessment process required pursuant to subdivision (a), and they have agreed upon a goal to be attained under this program and the resources to be utilized in attaining that goal, the county and the participant shall amend the basic contract entered into pursuant to Section 11325.2.

The contract amendment shall specify the goal to be attained, the training or education services to be provided to the participant in order to attain the goal, which may consist of either one or more of the program components provided for in Sections 11322.8 and 11323.2, and the criteria for successful completion of these services and attainment of the goal. With respect to education and training programs, the criteria shall include regular attendance, satisfactory progress, and completion of the program. The contract amendment shall provide for supportive services as necessary for participation in this program.

Once the participant has begun his or her training or education, he or she shall have 30 days in which to request a change or reassignment to another component. The county shall grant the participant's request for reassignment to another component that is consistent with the results of the assessment. This grace period shall be specified in the contract amendment and shall be available only once to each participant.

11325.6. Subject to the limitations of subdivision (f) of Section 11322.6, if services to be provided under the contract between the county welfare department and the participant are not immediately available to the participant, he or she shall receive job search services until the education or training services designated in the contract are available.

11325.8. (a) Any individual who meets the established criteria for successful completion of the training or education services to which he or she is assigned pursuant to this article, but who remains unemployed, shall be referred to job search services for a period of 90 days. These job search services may, depending upon the needs of the participant, include any of the services provided for in Section 11322.6. If the participant remains unemployed at the end of this 90-day job search period, he or she shall be evaluated and reassigned to an advanced long-term preemployment preparation assignment, as defined in Section 11322.8.

(b) If at any time a participant does not meet the established criteria for successful completion of the training or education services to which he or she is assigned, the participant shall be reassigned to a basic long-term preemployment preparation assignment, as described in Section 11322.8.

(c) The assignment to advanced or basic long-term preemployment preparation shall be reviewed by the county at least once every six months, for its continuing conformity to the contract, and likelihood of leading to unsubsidized employment. This review shall require a visit to the participant's worksite, and a discussion with the participant about his or her assignment and his or her job search progress.

11326. At the end of the one-year period specified in Section 11322.8, the county and the participant shall review the employment plan and, using the procedure described in Section 11325.4, shall make any revisions necessary to obtain the goal of unsubsidized employment for the participant. These revisions shall become an amendment to the basic contract as provided in this section.

11326.2. (a) Whenever a participant is assigned to a program component, the contract between the county welfare department and the participant shall be amended to reflect the assignment. The county and the recipient shall be bound by the terms of any amendments made to the contract. The participant shall maintain satisfactory progress toward the goal of employment through the methods set forth in the plan, and the county shall provide the services specified in the plan.

(b) In the event a self-initiated program participant and the county welfare department do not agree that the participant's occupational goal is likely to lead to employment, the participant shall be permitted to continue pursuing that goal if sufficent documentation can be shown to demonstrate that the local labor market provides reasonable opportunities to work in the desired occupation. The county welfare department shall give participants

whose self-initiated plan has been denied the chance to demonstrate that the local labor market presents job opportunities in the chosen occupation. Proof that job opportunities exist include, but are not limited to:

(1) A signed statement that an employer will give the person a job upon program completion.

(2) A list of three employers who have frequent openings in the occupation pursued by the participant and at a skill level that can be achieved by the participant through skills training components offered by the program.

(3) A statement from a school district, community college district, service delivery area, or Employment Development Department office identifying the occupation as a demand occupation in the local labor market.

11326.4. (a) Notwithstanding the procedures set forth in Chapter 7 (commencing with Section 10950) of Part 2, if the participant and the worker are unable to reach agreement on amending a contract, pursuant to Sections 11325.6 to 11326.2, inclusive, the matter shall be referred by the county for an independent assessment by an impartial third party with career planning experience. The results of this assessment, which shall be binding upon the county and the participant, shall be used to develop the appropriate employment plan for the participant.

(b) No assessment under this section shall be made by a party having any financial or other interest in the result of the assessment. The party making the assessment shall be selected by the department according to an unbiased procedure. Remuneration for this assessment shall be made by the department according to a fair fixed fee established by regulations of the department.

11326.6. A participant shall not be placed involuntarily in any other training or education component while waiting for assignment to the component agreed to in his or her contract.

11326.8. Since a participant assigned to preemployment preparation, as defined in Section 11322.8, will be expected to continue to seek employment, at any time during the participant's preemployment preparation assignment he or she may request job services, as defined in Section 11322.6.

11327. (a) Any participant who fails or refuses to participate without good cause in the program developed by the assessment pursuant to Section 11325.4 and conciliation efforts as specified in Section 11327.4 have failed to resolve the dispute shall receive sanctions in accordance with Section 11327.4.

(b) Any county which fails to provide services according to its plan approved pursuant to this article shall receive sanctions in accordance with Section 10605. A recipient or a group of recipients may request the director to invoke Section 10605.

(c) Any participant who has entered into an amended contract plan pursuant to Sections 11325.6 to 11326.2, inclusive, and who, at any time, fails or refuses to comply with program requirements

without good cause and conciliation efforts as specified in Section 11327.4 have failed to resolve the dispute shall be subject to sanctions in accordance with Section 11327.5.

11327.2. If an overpayment occurs pursuant to Section 11004, the number of hours calculated according to paragraphs (3) and (4) of subdivision (b) of Section 11322.8 represented by the overpayment recoupment shall be deducted from the hours of participation required in future months. If a participant ceases to participate under this article before the adjustment in hours can be made, the county shall forgive the overpayment.

11327.4. (a) Whenever an individual has failed or refused to comply with program requirements without good cause in a program component to which he or she is assigned pursuant to this article, and the participant continues to fail or refuses to comply with program requirements after a period of conciliation between the county and the participant, the individual shall be subject to sanctions specified in Section 11327.5. For the purposes of this article, "failing or refusing to comply with program requirements" shall be limited to: failing or refusing to sign a participant contract, participate in an assigned program activity, or accept employment; terminating employment; or reducing earnings. To the extent required by federal law or regulations, an individual who participates in the GAIN program and subsequently obtains employment of 30 hours or more per week and who remains on aid shall be considered to be refusing to comply with program requirements if he or she terminates that employment without good cause.

(b) The county shall schedule a time during which each individual who has failed or refused to comply with program requirements has an opportunity to demonstrate that he or she had good cause for that refusal or failure. The county shall schedule an appointment within 10 working days of the discovery of the non-participation. The individual shall be allowed to reschedule the cause determination appointment once. This rescheduled appointment shall take place within 10 working days of the initial appointment, unless delayed by extenuating circumstances. The county shall send a written notice that shall inform the individual of the scheduled appointment. The cause determination process shall not exceed 20 working days from the date of discovery of the nonparticipation, unless delayed by extenuating circumstances. The county notice shall include a list of the reasons that constitute good cause for not participating in the program, proposed date and time for an appointment and identify the transportation and child care services that a person is entitled to, as needed in order to attend the appointment. This notice shall inform the individual that failure to either attend the cause determination appointment or reschedule this appointment shall result in a cause determination in his or her absence, based on available evidence. Whenever a determination of good cause has been made, the county shall issue a written notice to the individual that reflects this determination.

(c) Whenever a county determines that a person failed or refused to meet program requirements without good cause, the county shall notify the individual, in writing, of this determination. The notice also shall inform the individual that he or she has entered into a 30-calendar-day period of conciliation, during which the county and the individual shall attempt to resolve any problems that are contributing to the failure or refusal to meet program requirements. This notice shall be mailed within five working days of the cause determination, unless delayed by extenuating circumstances. The 30-calendar-day period shall begin on the date the county issues the notice of the beginning of conciliation. The county may shorten the 30-calendar-day conciliation period only if one of the following conditions is met: (1) both the individual and the county agree, in writing, to terminate conciliation, or (2) the determination of no good cause has been reversed.

(d) The notice that begins the conciliation period shall identify the specific act or actions that has caused the individual to be out of compliance with participation requirements under this article, the proposed steps that the registrant may take to resolve the problem, the right to offer a counter-proposed conciliation plan, and the names, telephone numbers, and addresses of the local legal services office and welfare rights office, or the Coalition of California Welfare Rights Organizations if there is no welfare rights or legal aid office in the county, who could assist the individual with conciliation. The notice shall also contain the date and time of the conciliation appointment and identify the transportation and child care services the individual is entitled to in order to attend the meeting.

(e) Any issue that directly affects an individual's failure or refusal to meet program requirements may be discussed during conciliation. This includes providing further information demonstrating the individual had good cause for his or her nonparticipation. The individual also may request a supervisor of employees to review the good cause determination. If, as a result of a supervisor's review, the determination that the individual did not have good cause is reversed, the county shall notify the individual in writing of this reversal and that the conciliation period has been terminated.

(f) In conducting conciliation, counties shall make reasonable efforts to discuss with each individual in person or by telephone those issues affecting participation. At a minimum, counties shall do all of the following:

(1) Schedule one meeting with the individual to discuss resolving the barriers to participation. Counties shall reschedule the meeting once at the request of the individual.

(2) Directly contact by phone those individuals who fail to attend the meeting required in paragraph (1). Written contact is required for those individuals who do not have a phone or who cannot be reached by phone.

(g) When the individual and the county reach agreement on program participation during the conciliation period, a written

conciliation plan shall be entered into and signed by the county and the individual. If the individual subsequently fulfills the terms of the conciliation plan, conciliation shall be considered successful. The conciliation plan shall specify that the individual must complete the agreed upon activity, which may include signing the participant contract, attending orientation, or participating in a program component or participate for the first two weeks of the agreed upon program component, whichever is shorter.

(h) If an agreed-upon individual fails to fulfill the terms of the conciliation plan as specified in subdivision (g), the county shall notify the individual in writing to schedule an appointment for the individual to demonstrate good cause for the failure to fulfill the conciliation plan. The appointment shall be held within 10 working days of the discovery of the failure to meet the terms of the conciliation plan, unless delayed by extenuating circumstances. If the county determines that the individual did not have good cause for the failure to meet the terms of the conciliation plan, sanctions shall be imposed in accordance with Section 11327.5.

(i) If, at the end of the 30-calendar-day conciliation period, the individual continues to fail or refuse to comply with program requirements, sanctions shall be imposed in accordance with Section 11327.5. An additional 10-calendar-day extension of the conciliation period shall be available upon the agreement of the individual and the county only if both of the following conditions are met:

(1) The client has made a reasonable effort to conciliate during the initial 30-calendar-day conciliation period and that significant progress has been made toward a resolution to the dispute during that time.

(2) The county believes that an additional 10 calendar days of conciliation is likely to lead to agreement between the individual and the county on a conciliation plan.

(j) For the purpose of determining the length of the sanction that applies to an individual as described in Section 11327.5, an instance of noncompliance without good cause is considered to have occurred when the county issues a notice of action proposing to impose the sanction.

11327.5. (a) Sanctions shall be imposed in accordance with subdivision (b) or (c), as appropriate, if an individual has failed or refused to comply with program requirements without good cause and conciliation efforts, as described in Section 11327.4, have failed.

(b) The sanctions provided for in subdivisions (c) and (d) shall not apply to an individual who is exempt from the requirements of this article but is voluntarily participating in the program. If such an individual is a member of a group listed in paragraphs (1) to (5), inclusive, of subdivision (d) of Section 11322.4, and engages in conduct which would bring about the actions provided for in subdivisions (c) and (d), except for his or her status as a voluntary program participant, the individual shall not be given priority so long as other individuals are actively seeking to participate. In the case of

any other voluntary program participant who engages in conduct which would bring about the actions provided for in subdivisions (c) and (d), except for his or her status as a voluntary program participant, the individual shall be precluded from participating in the program for a period of six months.

(c) Financial sanctions for failing or refusing to comply with program requirements without good cause shall cause a reduction in the family's grant by removing the noncomplying family member from the assistance unit for a period of time specified in subdivision (d).

(1) For families which qualify for aid due to unemployment of the family's primary wage earner, the sanctioned parent shall be removed from the assistance unit. If the sanctioned parent's spouse or the family's second parent is not participating in the program, both the sanctioned parent and the spouse or second parent shall be removed from the assistance unit. The county shall notify the spouse of the noncomplying participant or second parent in writing at the commencement of conciliation of his or her own opportunity to participate and the impact on sanctions of that participation. Notwithstanding Section 11322.4, the sanctioned parent's spouse or the family's second parent shall be provided the opportunity to participate.

(A) Exemption criteria specified in Section 11310 do not apply to a spouse or second parent who is participating to avoid the sanction of the noncomplying parent.

(B) Notwithstanding subdivision (a), Section 11310, Section 11325, and subdivisions (b) to (*l*), inclusive, of Section 11328, if the sanctioned parent's spouse or the family's second parent chooses to participate to avoid the noncomplying parent's sanction and subsequently fails or refuses to participate, he or she shall be removed from the assistance unit, commencing on the date of the nonparticipation, in accordance with the terms of the first parent's sanction.

(C) If the sanctioned parent's spouse or the family's second parent is under his or her own sanction at the time of the first parent's sanction, the spouse or second parent shall not be provided the opportunity to avoid the first parent's sanction until the spouse or second parent's sanction is completed.

(2) For families which qualify due to the absence or incapacity of a parent, only the noncomplying parent shall be removed from the assistance unit.

(3) If the noncomplying individual is the only dependent child in the family, his or her needs shall not be taken into account in determining the family's need for assistance and the amount of the assistance payment.

(4) If the noncomplying individual is one of several dependent children in the family, his or her needs shall not be taken into account in determining the family's need for assistance and the amount of the assistance payment.

(d) The length of time that financial sanctions shall reduce a family's grant shall increase in the following manner:

(1) The first instance of noncompliance without good cause shall result in a financial sanction. This sanction shall terminate at any point if the noncomplying participant reaches an agreement with the county welfare department in an amended contract or agrees to participate and performs the activity he or she previously refused to perform.

(2) The second instance of noncompliance without good cause shall result in a financial sanction for three months or until the noncomplying participant reaches an agreement with the county welfare department or agrees to participate and performs the activity he or she previously refused to perform, whichever is longer.

(3) The third and each subsequent instance of noncompliance without good cause shall result in a financial sanction for six months or until the noncomplying partipant reaches an agreement with the county welfare department or agrees to participate and performs the activity he or she previously refused to perform, whichever is longer.

(e) Sanctions shall become effective on the first day of the first payment-month that the sanctioned individual's needs are removed from aid under this chapter.

(f) In the event this section conflicts with federal law, the department shall adopt regulations to conform to federal law.

11327.6. Notwithstanding any other provision of law, any person who is not required to register under this article but who volunteers to participate in the program established by this article and fails to appear for a scheduled appointment prior to entering into the basic contract shall be deemed to not be subject to the requirements of this article and the conciliation efforts and sanction requirements established under Sections 11327.4 and 11327.5 shall not apply.

11327.8. Except as specified in this section, whenever a participant believes that any program requirement or assignment in this program is in violation of his or her contract or is inconsistent with this article, the participant may invoke the formal grievance procedure, which shall be conducted in accordance with Section 5302 of the Unemployment Insurance Code, request a fair hearing pursuant to Chapter 7 (commencing with Section 10950) of Part 2, or utilize a formal grievance procedure to be established by the county board of supervisors, and to be specified in each county plan. If the participant is not satisfied with the outcome of the grievance procedure, he or she may appeal the decision in accordance with the procedures set forth in Chapter 7 (commencing with Section 10950) of Part 2. Participants shall be subject to sanctions pending the outcome of the formal grievance procedure or any subsequent appeal, only if they fail to participate during the period the grievance procedure is being processed. However, a participant shall not utilize the grievance procedure to appeal the results of an assessment made pursuant to Section 11325.4 or 11326.4.

11328. No sanctions shall be applied for a failure or refusal to

comply with program requirements with good cause. Good cause for failure or refusal to comply with program requirements shall include all of the following:

(a) An assignment, job referral, or job does not meet appropriate work and training criteria due to any of the following:

(1) The employment, offer of employment, activity or other training for employment discriminates in terms of age, sex, race, religion, ethnic origin, or physical or mental handicap.

(2) The employment or offer of employment, exceeds the daily or weekly hours of work customary to the occupation.

(3) The employment, offer of employment, activity, or other training for employment requires travel to and from the place of employment, activity, or other training and one's home that exceeds a total of two hours in round trip time, exclusive of the time necessary to transport family members to a school or place providing care, or when walking is the only available means of transportation, the round trip is more than two miles, exclusive of the mileage necessary to accompany family members to a school or a place providing care.

(4) The employment, offer of employment, activity, or other training for employment involves conditions and specific responsibilities that impair the individual's physical or mental health or are not related to the individual's capability to perform the task on a regular basis.

(5) The employment, offer of employment, activity, or other training for employment involves conditions that are in violation of applicable health and safety standards.

(6) The employment, offer of employment, or work activity does not provide for worker's compensation insurance.

(7) An employment or training program position utilized pursuant to this article may not be created in violation of Section 11324.2.

(8) The employment, offer of employment, activity, or other training is not within the scope of the employment plan as contained in the contract provided for under this article.

(9) Accepting the employment, offer of employment, or work activity would cause the individual to violate the terms of his or her union membership.

(10) Accepting the employment, offer of employment, or work activity would cause an interruption in an approved education or job training program in progress, excluding community work experience assignments as described in subdivision (b) of Section 11322.8, or would prevent the individual from returning to his or her regular job within a reasonable time, unless the job offer provides either of the following:

(A) Employment and sufficient income to lead to self-support and the job offer is within the scope of the employment plan.

(B) Temporary employment while the individual is waiting for reemployment in his or her regular job.

(11) The participant is not receiving the supportive services

agreed to under the contract entered into pursuant to this article.

(12) In addition to good cause as specified in this section, no sanction shall be applied to any participant who is absent or tardy for periods up to 10 percent of the monthly hours required for any component, or the provider's standard. However, this time shall not accumulate.

(13) The employment or offer of employment is at a wage level that results in a net loss of income, in accordance with subdivision (k).

(14) The employment, offer of employment, or required activity requires the individual to remain away from home overnight without his or her consent.

(15) The employment, offer of employment, or required activity exceeds 20 hours per week for parents who are personally providing care for children who are under six years of age.

(b) The individual is temporarily physically incapacitated or suffers temporary physical illness.

(c) The individual is required to appear in a court proceeding or is incarcerated.

(d) The individual is suffering a family crisis or changed individual family circumstance as evidenced, for example, by the death of a spouse, parent, or child or an illness of a spouse, parent, or child which requires the individual's immediate attention.

(e) Inclement weather or other act of nature precludes the individual and other persons similarly situated from traveling to an activity.

(f) There is a breakdown in transportation arrangements with no ready access to alternate transportation.

(g) The individual needs any other necessary social service not specifically mentioned in his or her contract.

(h) An individual refuses to accept major medical services even if the refusal precludes participation in the program.

(i) Licensed or exempt child care is not reasonably available, or is not reasonably available during the individual's hours of training or employment including commuting time, or arrangements for child care have broken down or have been interrupted, or child care is needed for a child who meets the criteria of subdivision (a) of Section 11323.2 but who is not included in the assistance unit. For purposes of this section, "reasonably available" means having at least two choices of child care arrangements. The choices of day care shall meet either licensing requirements or the criteria established pursuant to subdivision (d) of Section 11323.8. This exemption shall include the unavailability of suitable special needs child care for children with identified special needs, including, but not limited to, disabilities or chronic illnesses.

(j) An individual is engaged in employment or training that is consistent with the employability objectives of the program, and prior notification and approval from the worker has been received.

(k) Net loss of income would occur pursuant to the conditions

provided for in this subdivision, if an offer of employment which results in a net income of less than 100 percent of a person's grant is accepted. Net loss of income shall be deemed to occur when current income is greater than the postemployment income would be if the job offer were accepted. "Postemployment income" means gross income less necessary work-related expenses as follows: mandatory and legal deductions from the proposed salary, transportation, and child care including the child care share of cost for individuals eligible for transitional child care. Gross income and work-related expenses shall be defined so as to ensure receipt of federal financial participation.

For purposes of computing postemployment income, the regional market rate for child care, transportation, and other mandatory work-related expenses shall be used. Regional market rates for child care shall be determined in accordance with the Alternative Payment Program as provided for under Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code.

(*l*) Any other substantial and compelling reason not specified in this section, to be determined at the discretion of the county.

11328.1. (a) No sanctions shall be applied for terminating employment or reducing earnings with good cause.

(b) For purposes of subdivision (a), "good cause" means any of the following:

(1) Criteria described in subdivisions (a) to (k), inclusive, of Section 11328.

(2) Compulsory retirement.

(3) Company layoffs or cutbacks.

(4) Relocation of the family resulting in a commute time in excess of that specified in paragraph (3) of subdivision (a) of Section 11328.

(5) Denial of equal employment opportunities to the individuals subject to this section.

(6) The individual was subject to sexual harrassment on the job.

(7) The individual's employer did not meet one or more of the following requirements:

(A) Having an operating license required by state or federal law or local ordinances.

(B) Maintaining worker's compensation insurance.

(C) Withholding the unemployment insurance or disability insurance contributions required by law.

(8) The job presented a danger of substantial physical injury or death to the individual.

(9) The individual accepted other employment, regardless of whether the acceptance of the employment offer resulted in new employment.

(10) Any other substantial and compelling reason which is not specified in this section, as determined by the county welfare department.

11328.2. A participant under this article shall have all due process rights granted pursuant to Chapter 7 (commencing with Section

10950) of Part 2.

11328.4. (a) In order to measure the effectiveness of county plans under this article, performance standards for this article shall be consistent with those developed for service delivery areas pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code.

(b) The Health and Welfare Agency shall ensure that performance standards include, but are not limited to all of the following goals:

(1) The training program participants for unsubsidized employment.

(2) Reducing welfare costs by increasing earnings of program participants in unsubsidized employment.

(3) Placement in unsubsidized employment resulting from all program components.

11328.6. (a) All contracts between counties and providers of services under this article, including employers providing preemployment preparation, shall include specific performance criteria. Any such contract or agreement shall also include the provision of job placement by the education or service provider and a provider-developed standard, containing quantitative and qualitative measures by which to determine if a participant is making satisfactory progress.

(b) These contracts shall provide for termination of the contract at the discretion of the county if the provider either: (1) violates the contract between the county and the participant provided by Section 11325.2, or (2) fails to meet the performance criteria specified in the contract.

11328.8. (a) The department, under the direction of the Health and Welfare Agency, the Chancellor's office of the California Community Colleges, and the State Department of Education shall each develop and implement regulations whereby any payment for services from funds appropriated for the purposes of this article and delivered pursuant to Section 11322.8 by an entity contracting with a county shall be made in accordance with a competitively selected fixed unit price performance-based contract. Under these contracts, full payment shall not be considered earned until either of the following has occurred:

(1) The participant has successfully completed the education program.

(2) The participant has successfully completed the job training program and has been retained in unsubsidized employment for at least 180 days.

(b) Up to 70 percent of the fixed unit price for job training may be paid upon placement. At least 30 percent of the fixed unit price for job training shall be withheld for the followup during the 180-day retention period. Progress payments shall be made from this portion upon evidence of job retention at 30, 90, and 180 days. A pro rata share of the 70 percent payment shall be paid to the training provider

if the participant fails to complete the training.

(c) The department may exempt county contracts for GAIN educational services from subdivisions (a) and (b) in instances where counties are unable to obtain educational services due to the absence of an available adult education program or the small number of GAIN referrals. The department, in conjunction with the State Department of Education, shall develop criteria for granting the exemptions from subdivisions (a) and (b). The departments shall also consider using funds set aside for GAIN educational services in the State Department of Education's annual budget allocation or funds allocated to the State Department of Education for GAIN costs in the annual Budget Act, to pay for the costs of education contracts permitted by this subdivision.

11329. (a) The department shall evaluate the program and shall collect data on program cost, caseload movement, and program outcomes, including data on all of the following:

(1) The numbers of voluntary and mandatory participants in each program component.

(2) The amount of time that each participant remains in each component and the types of services, including supportive services, each participant receives.

(3) The number of recipients in each component that move to each of the other components.

(4) The number of participants sanctioned as well as the amount and duration of the sanction, the reason for the sanction, and the amount of time the participant was in the program prior to the sanction.

(5) The number of participants who go off aid, and to the extent possible, the reason they have gone off aid.

(6) The number of applicants who reapplied for and received aid after having gone off aid during the time they were participating in the program.

(7) The starting salary of employed participants.

(8) Participants' job retention rates.

(9) The appropriateness of the categorization of participants.

(10) The appropriateness of assessments and employment plans.

(11) The appropriateness of preemployment preparation assignments, including a periodic review of the appropriateness of these assignments.

(12) The effectiveness of training components based upon the number of individuals placed in employment.

(13) The timeliness of preemployment preparation assignment reviews.

(14) The appropriateness of sanctions applied under this article.

(b) The department may use standard statistical sampling methods to conduct the evaluation. The department shall maintain this data for the state and for each county. The department may contract with a qualified organization for the evaluation required by this section. The department shall submit a plan for implementing

this evaluation to the Joint Legislative Budget Committee. To the extent possible, the data collection system for this evaluation shall be designed to collect data in the least expensive and least time-consuming manner possible.

(c) Utilizing the data compiled pursuant to this subdivision, the department shall annually report, by January 10, to the Legislature and the Governor on the effectiveness of the program provided for in this article. The Legislative Analyst shall submit a review of this report to the Legislature by April 15 of each year.

11329.2. (a) The department shall seek any federal funds available for implementation of this article, including, but not limited to, funds available under Title IV of the federal Social Security Act (42 U.S.C. Sec. 601 et seq.) for the Employment Search Program and the Community Work Experience Program.

(b) The department shall seek any waiver from the Secretary of the United States Department of Health and Human Services which is necessary to implement this article.

11329.4. (a) No funds appropriated for purposes of this article shall be used to fund education or training services in any county plan if these services could reasonably be provided by local educational agencies from Section A or Section B of the State School Fund which are not otherwise committed.

(b) No local educational agency shall be authorized to receive funds appropriated for purposes of this article unless it has demonstrated that it has fully committed all the funds from Section A or Section B of the State School Fund available to it, as certified by the district to the Chancellor of the California Community Colleges, or the Superintendent of Public Instruction.

(c) The Chancellor of the California Community Colleges and the Superintendent of Public Instruction, as appropriate, shall certify this information to the Director of Finance.

11329.5. (a) The department may participate in the federal Job Opportunities and Basic Skills program evaluation for the purpose of evaluating the placement of the basic education component of the GAIN program. The State Department of Social Services shall consult with the State Department of Education to ensure that the evaluation addresses the major issues of concern to both agencies.

(b) The department may participate in the federal Job Opportunities and Basic Skills program evaluation for other purposes after consulting with the appropriate policy committees in the Legislature, counties, and organizations representing the interests of welfare clients.

SEC. 8. Article 3.3 (commencing with Section 11321) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 9. Article 3.5 (commencing with Section 11325) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 10. Article 3.3 (commencing with Section 11330) is added

to Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 3.3. Teenage Parents

11330. (a) The Legislature finds and declares that the connection between teenage parenting and long-term welfare dependency has been well documented by recent social science research. An estimated 60 percent of teenage parents who are currently receiving welfare will have 10 or more years of dependency on aid. Average time on aid for teenage parents is significantly longer than for parents who begin families at an older age.

(b) The Legislature finds that teenage parents who receive assistance under the Aid to Families with Dependent Children program have unique education, vocational, training, health, and other social service needs that are not specifically provided for as part of the Greater Avenues for Independence (GAIN) program. Research shows that successful programs that help teenage parents achieve self-sufficiency contain the following features:

(1) A comprehensive range of health and social services.

(2) Adequate supportive services.

(3) A sympathetic and supportive program atmosphere.

(4) Individual attention, especially regarding education pace and plan.

(5) An open format and an extended period of program availability.

(6) Caring, nonjudgmental staff.

(7) Strong case management systems, including followup activities to determine whether a student is progressing in his or her studies.

(c) The Legislature declares that this article is intended to ensure that the GAIN program does all of the following:

(1) Provide the education and training services needed by teenage parents to help them earn a high school diploma or its equivalent, including vocational training and preparation that may be available through local education agencies.

(2) Link teenagers to other needed health and social services available in the community.

11330.1. (a) Custodial parents 16 or 17 years of age who are required to register pursuant to Section 11310 shall be required to participate in the program, subject to both of the following requirements:

(1) The custodial parent shall participate in the program until the registrant earns his or her high school diploma or its equivalent.

(2) The custodial parent shall participate in the program as a student attending school on a full-time basis, as normally defined by the program in which the participant enrolls.

(b) For the purposes of this article, "teen" or "teenage parent"

means a custodial parent under 18 years of age, who is required to register pursuant to Section 11310.

11330.2. Counties shall provide education and supportive services that custodial parents under 18 years of age need to successfully participate in the GAIN program. The county shall identify the need of each individual for, and the method of providing, the following services:

(a) Supportive services, including child care and transportation, as specified in Section 11323.2. Supportive services shall be limited to those that are necessary to enable the teenage parent to participate in the education plan specified in subdivision (a) of Section 11330.4.

(b) Intensive case management services, as described in Section 11330.5.

11330.3. (a) Participation by a custodial parent under 18 years of age shall be deferred if the county determines that any of the services an individual is assessed as needing pursuant to Section 11330.2 are not available.

(b) Participation by a custodial parent under 18 years of age shall be deferred so long as the individual has a special need that directly affects his or her ability to attend school or be successful in earning a high school diploma and the special need cannot be addressed.

11330.4. (a) Participant contracts required under Section 11325.2 shall include a detailed education plan.

(b) The plan required by this section shall be written by the local school district, and shall meet all of the following requirements:

(1) Be developed with the participant in consultation with the county welfare department.

(2) Describe the education program that the participant shall be required to follow, including vocational training and preparation that may be available through local education and training agencies.

(3) Include courses and services that the school district currently offers to students, including child care, child development and parenting education, homemaking, or other consumer education and life skills courses, and counseling and guidance services, as appropriate for each student.

(c) It is the intent of the Legislature that the education plan described in this section not require additional activities from school districts beyond those already required when a student who has dropped out of school indicates a desire to resume attendance.

(d) Involvement of the parents of the teenage parent in the development of the education plan should be encouraged, if appropriate.

11330.5. (a) Counties shall provide case management services and counseling to teenagers as needed to assist their participation in in the GAIN program. Case management services shall include all of the following:

(1) Designing a realistic GAIN plan that maximizes the ability of each client to reach his or her goal.

(2) Providing referrals to appropriate community services

needed to assist the teenage parent's return to school.

(3) Monitoring each client's progress and making the necessary changes to improve the individual's program.

(4) (A) Acting as a counselor, colleague, and role model so that each teenage parent has someone to trust and to turn to for advice, guidance, and ideas.

(B) Case managers should be prepared to provide intensive counseling during all phases of a teenage parent's progress through the GAIN program.

(5) Ensuring that each teenage parent understands completely the consequences of not returning to school as required under this article.

(b) Counties shall afford case managers assigned to assist teenage parents under 18 years of age sufficient time to provide the needed education and supportive services.

(c) (1) Case managers assigned to assist parents under the age of 18 years shall possess an expertise in understanding the education, training, and other social and health service needs of teenage parents, as well as the local program that provide these services.

(2) Each county, in conjunction with the department, shall provide training to persons assigned to work with teenage parents to develop the expertise required by subparagraph (A).

(d) The county plan required by Section 11320.6 shall describe the way each county proposes to provide case management services to teenage parents.

11330.6. (a) Notwithstanding Article 3.2 (commencing with Section 11320), there shall be no limits on the amount of time that a parent under the age of 18 may participate in the initial education components of the program in order to achieve a basic level of literacy or to earn a high school diploma.

(b) Parents who begin participation in the GAIN program before the age of 18 may continue to receive needed intensive case management services after the age of 18 until the individual earns a high school diploma or its equivalent.

11330.7. County welfare departments shall encourage teenage parents who have received a high school diploma or its equivalent and who are not mandatory participants pursuant to this article to continue participation in the GAIN program on a volunteer basis. Counties shall work with local training providers, including service delivery areas and community college districts and school districts, to create training opportunities that meet the needs of teenage parents.

11330.8. (a) Counties may contract for the provision of case management services, as defined in subdivision (b) of Section 11330.2, and in Section 11330.5, only with public or nonprofit agencies that administer services under the Adolescent Family Life Program (Article 3.2 (commencing with Section 309.100) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code), school districts, or other public or nonprofit agencies approved by the department.

(b) Contracting with an adolescent family life program shall be deemed to fulfill the case management requirements of subdivision (b) of Section 11330.2.

(c) If a county chooses to contract out some or all of the case management services required under this article, the county plan shall specifically list the reasons for that decision.

(d) If a county chooses to contract for case management services pursuant to subdivision (a), the county shall maintain one or more liaison staff members who have expertise in the special needs of teenage parents.

11330.9. (a) Counties shall develop linkages with local service providers that serve teenage parents, to the extent that they are required under subdivision (a) of Section 11320.8.

(b) The county plan required by Sections 11320.6 and 11320.8 shall specifically describe those required services that are available to teenage parents, as follows:

(1) An identification of available services to teenagers.

(2) The extent to which these programs are currently serving AFDC recipients.

(3) The resources that these programs may make available to GAIN participants.

(4) The linkages established with these programs.

(c) The department shall review each county's plan to determine both of the following:

(1) Whether the intensity of case management services provided by the county meets the requirements of subdivision (b) of Section 11330.2.

(2) Whether the requirements specified in Sections 11320.6 and 11320.8 address the availability of services to teenagers.

11330.10. (a) Any participant required to participate pursuant to Section 11330.1 who is not less than 16 years of age and who is under 18 years of age and fails or refuses to comply with program requirements, without good cause, in the education program identified pursuant to the individual education plan and conciliation efforts as specified in Section 11327.4 have failed to resolve the dispute, shall be subject to the sanctions imposed by Section 11327.5.

(b) If it is determined that a teenage parent subject to subdivision (a) has refused or failed to comply with program requirements without good cause, the county welfare department shall determine whether the parent is living with his or her own parent, parents or guardian, or whether the teenage parent is living independent of any legal guardian.

(c) (1) If the teenage parent is living with his or her own parent, parents or guardian, the county welfare department shall notify both the teenage parent and his or her legal guardian of the teenage parent's failure to comply with program requirements.

(2) The notice required by paragraph (1) shall contain the telephone number and address of the local welfare rights organization or legal aid society from which the teenage parent may

obtain legal assistance or representation.

(3) The county welfare department shall permit the legal guardian of the teenage parent to attend any meetings between the county and the teenage parent designed to encourage or induce participation from the noncooperating teenage parent.

(d) (1) If the teenage parent is living independent of a legal guardian, the county welfare department shall notify the teenage parent of his or her failure to cooperate with the program.

(2) The notice required by paragraph (1) shall contain the telephone number and address of the local welfare rights organization or legal aid society from which the parent may obtain legal assistance or representation during the conciliation and sanction process.

(e) Case managers shall do all of the following:

(1) Fully inform teenage parents of the consequences of not complying with the program.

(2) Make reasonable efforts to reach teenage parents who they believe are in danger of failing to participate without good cause.

(3) Make reasonable efforts to secure a face-to-face meeting with a teenage parent before making a good cause determination.

(f) If a teenage parent fails or refuses to comply with program requirements without good cause, the case manager shall again inform the client of the consequences of not participating in the program and shall provide the teenage parent with the telephone number and address of the local welfare rights organization or legal aid society should he or she need further assistance.

SEC. 11. Article 3.8 (commencing with Section 11347) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 12. Section 11451.5 of the Welfare and Institutions Code is repealed.

SEC. 13. The Director of Social Services shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this act. The adoption of those regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding Chapter 3.5 of the Government Code, emergency regulations adopted by the department in order to implement this act shall not be subject to the review and approval of the Office of Administrative Law until 120 days after the regulations take effect. These regulations shall become effective October 1, 1990, but shall not remain in effect for more than 120 days unless the department complies with the other provisions of Chapter 3.5.

SEC. 14. No reimbursement is provided in this act pursuant to Section 6 of Article XIII B of the California Constitution because funding will be provided in the annual Budget Act to cover any costs that may be incurred in carrying on any program and performing any service required to be carried on or performed by this act.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 15. This act shall become operative on October 1, 1990, or the date of approval by the Secretary of the United States Department of Health and Human Services of California's Job Opportunity and Basic Skills program and supportive services state plan preprints, whichever is later.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement federal regulations under the federal Family Support Act of 1988 (P.L. 100-485), and, therefore, take advantage of the federal funds available under that act for the Greater Avenue for Independence (GAIN) program, as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1569

An act to amend Section 10176 of the Insurance Code, relating to podiatrists.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 10176 of the Insurance Code is amended to read:

10176. In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any of those services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. No such policy shall prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2050, 2472, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

If the insured selects any person who is a holder of a certificate under Section 4938 of the Business and Professions Code, a disability insurer or nonprofit hospital service plan shall pay the bona fide

claim of an acupuncturist holding a certificate pursuant to Section 4938 of the Business and Professions Code for the treatment of an insured person only if the insured's policy or contract expressly includes acupuncture as a benefit and includes coverage for the injury or illness treated. Unless the policy or contract expressly includes acupuncture as a benefit, no person who is the holder of any license or certificate set forth in this section shall be paid or reimbursed under the policy for acupuncture.

Nor shall any such policy prohibit the insured, upon referral by a physician and surgeon licensed under Section 2050 of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any occupational therapist as specified in Section 2570 of the Business and Professions Code, or any marriage, family and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech pathologist or audiologist licensed under Section 2530 of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at such time as the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code to perform services deemed necessary by the referring physician, that certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, "marriage, family and child counselor" means a licensed marriage, family and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

An individual disability insurance policy, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage may not include a lifetime waiver for that coverage with respect to any applicant. The lifetime waiver of coverage provision shall be deemed unenforceable.

SEC. 2. Section 10176 of the Insurance Code is amended to read:

10176. (a) In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any of these services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. No policy of disability insurance shall prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2050, 2472, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

(b) If the insured selects any person who is a holder of a certificate under Section 4938 of the Business and Professions Code, a disability insurer or nonprofit hospital service plan shall pay the bona fide claim of an acupuncturist holding a certificate pursuant to Section 4938 of the Business and Professions Code for the treatment of an insured person only if the insured's policy or contract expressly includes acupuncture as a benefit and includes coverage for the injury or illness treated. Unless the policy or contract expressly includes acupuncture as a benefit, no person who is the holder of any license or certificate set forth in this section shall be paid or reimbursed under that policy for acupuncture.

(c) No policy of disability insurance shall prohibit the insured, upon referral by a physician and surgeon licensed under Section 2050 of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any occupational therapist as specified in Section 2570 of the Business and Professions Code, or any marriage, family and child counselor who is the holder of a license under Section 4980.50 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech pathologist or audiologist licensed under Section 2530 of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, at such time as the State Board of Registered Nurses produces and maintains a list of those psychiatric-mental health nurses who possess a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code to perform services deemed necessary by the referring physician,

that certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

(d) Nothing in this section shall be construed to allow any certificate holder or licensee specified in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, "marriage, family and child counselor" means a licensed marriage, family and child counselor who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

(e) An individual disability insurance policy, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage may not include a lifetime waiver for that coverage with respect to any applicant. The lifetime waiver of coverage provision shall be deemed unenforceable.

(f) Except for physician referrals required by subdivision (c), no condition or limitation on the number of visits or on total payments for any services covered by a disability insurance policy shall be imposed by an insurer, unless the same condition or limitation is imposed on all certificate holders and licensees that are specified in this section and expressly authorized by law to perform those services.

SEC. 3. Section 2 of this bill incorporates amendments to Section 10176 of the Insurance Code proposed by both this bill and AB 2044. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 10176 of the Insurance Code, and (3) this bill is enacted after AB 2044, in which case Section 1 of this bill shall not become operative.

CHAPTER 1570

An act to amend Section 1522 of the Health and Safety Code, and to amend Sections 11105 and 11105.3 of, and to add Section 11105.4 to, the Penal Code, relating to criminal records.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1522 of the Health and Safety Code is amended to read:

1522. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and

safety.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the state department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of, or, after having been arrested and released on bail or on his or her own recognizance, is currently awaiting trial for, a crime other than a minor traffic violation. No fee shall be charged by the Department of Justice or the state department for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant, or any other person specified in subdivision (b), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

(6) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(7) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a

condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the licensing agency not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints may be on a card provided by the State Department of Social Services or by a local law enforcement office for the purpose of obtaining a permanent set of fingerprints. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the department shall verify receipt of the fingerprints.

Within 10 working days of the receipt of these fingerprints, the State Department of Social Services shall submit them to the Department of Justice. If new fingerprints are required for processing, the department shall notify the licensee within five working days of receipt of the fingerprints. If the department has not received the information required by this section within 45 calendar days, it shall request a status report on the fingerprint clearance from the Department of Justice.

Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the licensee of the criminal convictions, as provided in this subdivision. If no convictions are recorded, the department shall provide the licensee with a statement of the fact that there are no convictions within 10 working days of receipt of this information from the Department of Justice. If new fingerprints are required for processing, the State Department of Social Services shall notify the licensee within five working days from the date of notification by the Department of Justice that the fingerprints were illegible.

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the

person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(d) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the state department or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other adult person residing in the home has ever been convicted of, or arrested for, a crime other than a minor traffic violation. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the state department for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal arrests or convictions. The applicant shall submit these fingerprints to the licensing agency or other approving authority. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If any arrests or convictions are recorded, the department shall provide the licensee with a statement of that fact. The application shall be denied if it is determined by the approving authority, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 220, 243.4, 264.1, paragraph (1) of Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was convicted of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the state department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty,

or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(f) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, paragraph (1) of Section 273a, Sections 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

(h) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

SEC. 2. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(i) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, date of arrests, arresting agencies and booking numbers, charges,

dispositions, and similar data about such person.

(ii) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a), (b), and (f) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08 of the Penal Code.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5

(commencing with Section 11120), Chapter 1, Title 1 of Part 4 of the Penal Code.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 3110 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the Attorney General supplies such data, he shall furnish a copy of such data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(9) Any public utility as defined in Section 216 of the Public

Utilities Code, when access is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violations. Any public utility's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities to request state summary criminal history information on any current or prospective employees.

(10) To any campus of the California State University and Colleges or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, when needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint

card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing or certification purposes, the Department of Justice may charge the person or entity making the request a fee which it determines to be sufficient to reimburse the department for the cost of furnishing such information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other provisions of law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for such expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to such sections and for maintenance and improvements to the systems from which the information is obtained when appropriated by the Legislature therefor.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other provision of law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks which are authorized by law.

SEC. 3. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other provision of law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest for which the person is released on bail or on his or her own recognizance pending trial, involving any sex crimes, drug crimes, or crimes of violence of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under their care. The

biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(d) Ten deputy clerks V, who shall receive a salary at a rate equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities. Notwithstanding subdivision (b) of Section 74749, persons who hold the position of deputy clerk on January 1, 1991, may be appointed by the court administrator to the position of deputy clerk V without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(e) Sixteen deputy clerks IV, who shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III.

(f) Ninety deputy clerks III, II, I, or deputy clerk-intermediate clerk typists as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I class may be at any step within the salary range. Up to four of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego.

(g) One deputy clerk-municipal court secretary. A deputy clerk-municipal court secretary shall receive a biweekly salary at a rate equal to that specified for criminal legal secretary III in the classified service of the County of San Diego. Appointments to the class of deputy-clerk municipal court secretary may be at any step within the salary range at the discretion of the court administrator. Notwithstanding subdivision (b) of Section 74749, persons who hold the position of deputy clerk-administrative secretary IV on January 1, 1991, may be appointed by the court administrator to the position of deputy clerk-municipal court secretary without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(h) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A

transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this subdivision or subdivision (g) within the immediately preceding 10-year period.

(i) As used in this section, "crime of violence" means any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for any of the offenses specified in subdivision (c) of Section 667.5 or a violation or attempted violation of Chapter 3 (commencing with Section 207), Chapter 8 (commencing with Section 236), or Chapter 9 (commencing with Section 240) of Title 8 of Part 1, provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this subdivision or subdivision (g) within the immediately preceding 10-year period.

(j) Conviction for a violation or attempted violation of an offense committed outside the State of California is a sex crime, drug crime, or crime of violence if the offense would have been a crime as defined in this section if committed in California.

(k) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 4. Section 11105.4 is added to the Penal Code, to read:

11105.4. (a) Notwithstanding any other provision of law, a contract or proprietary security organization may request the following criminal history information concerning its prospective employees:

(1) Any criminal history information that a human resource agency may request pursuant to Section 11105.3, except criminal history information described in subdivision (c) of that section.

(2) Any criminal history information that a bank may request pursuant to Section 777.5 of the Financial Code.

(b) The Department of Justice shall promulgate regulations to assure that criminal record information is not released to persons or entities not authorized to receive the information under this section.

(c) Any criminal history information obtained pursuant to this section shall be subject to the same requirements and conditions that the information is subject to when obtained by a human resource agency or a bank.

(d) The Legislature finds that contract security organizations and private security organizations often provide security service for financial institutions and human resource agencies, and, consequently, they have the same need for criminal history information as do those entities. Therefore, the Legislature intends to provide authority for contract security organizations and proprietary security organizations to obtain criminal history information to the extent that financial institutions and human resource agencies have that authority concerning their own

employees.

(e) As used in this section, "contract security organization" means a person, business, or organization licensed to provide services as a private patrol operator, as defined in subdivision (b) of Section 7521 of the Business and Professions Code.

As used in this section, "proprietary security organization" means an organization within a business entity that has the primary responsibility of protecting the employees and property of its employer, and which allocates a substantial part of its annual budget to providing security and protective services for its employer, including providing qualifying and in-service training to members of the organization.

(f) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1571

An act to amend, repeal, and add Section 12022.6 of the Penal Code, relating to crimes.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 12022.6 of the Penal Code is amended to read:

12022.6. When any person takes, damages, or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows:

(a) If the loss exceeds twenty-five thousand dollars ($25,000), the court shall in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted impose an additional term of one year.

(b) If the loss exceeds one hundred thousand dollars ($100,000), the court shall in addition and consecutive to the punishment

prescribed for the felony or attempted felony of which the defendant has been convicted impose an additional term of two years.

In any accusatory pleading involving multiple charges of taking, damage, or destruction, the additional terms provided in this section may be imposed if the aggregate losses to the victims from all felonies exceed the amounts specified in this section. All pleadings under this section remain subject to the rules of joinder and severance stated in Section 954.

The additional terms provided in this section shall not be imposed unless the facts of the taking, damage, or destruction in excess of the amounts provided in this section are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

This section applies to, but is not limited to, property taken, damaged, or destroyed in violation of Section 502 or subdivision (b) of Section 502.7.

(c) This section shall remain in effect only until July 1, 1992, and as of that date is repealed unless a later enacted statute, which is enacted before July 1, 1992, deletes or extends that date.

SEC. 2. Section 12022.6 is added to the Penal Code, to read:

12022.6. Any person who takes, damages or destroys any property in the commission of a felony, with the intent to cause such taking, damage or destruction, and the loss exceeds:

(a) Twenty-five thousand dollars ($25,000), the court shall in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted impose an additional term of one year.

(b) One hundred thousand dollars ($100,000) the court shall, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, impose an additional term of two years.

The additional terms provided in this section shall not be imposed unless the facts of the taking, damage, or destruction in excess of amounts provided in this section are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

This section applies to, but is not limited to, property or subdivision (b) of Section 502.7.

This section shall become operative on July 1, 1992.

SEC. 3. The Attorney General shall conduct a survey and report to the Legislature on or before January 31, 1992, on the number and types of cases in which enhancements were applied between January 1, 1991, and December 31, 1991, pursuant to Section 12022.6 of the Penal Code.

CHAPTER 1572

An act to amend Sections 56383, 65104, 65354.5, 65358, 65456, 65863.7, 65909.5, 66000, 66004, and 66010 of, to add Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) to Division 1 of Title 7 of, and to repeal Sections 65962, 66008, 66009, and 66017 of, and Chapter 12.6 (commencing with Section 54989), Chapter 13 (commencing with Section 54990), Chapter 13.1 (commencing with Section 54994.1), Chapter 13.5 (commencing with Section 54995), and Chapter 14 (commencing with Section 54997) of Part 1 of Division 2 of Title 5 of, the Government Code, to amend Sections 4746.5, 17951, 19132.3, and 19852 of the Health and Safety Code, to amend Section 21671.5 of the Public Utilities Code, and to amend Section 77.1 of the Antelope Valley-East Kern Water Agency Law (Chapter 2146 of the Statutes of 1959), relating to local government fees.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Chapter 12.6 (commencing with Section 54989) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 2. Chapter 13 (commencing with Section 54990) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 3. Chapter 13.1 (commencing with Section 54994.1) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 4. Chapter 13.5 (commencing with Section 54995) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 5. Chapter 14 (commencing with Section 54997) of Part 1 of Division 2 of Title 5 of the Government Code is repealed.

SEC. 6. Section 56383 of the Government Code is amended to read:

56383. (a) The commission may establish a schedule of fees for the costs of proceedings taken pursuant to this division, including, but not limited to, all of the following:

(1) Checking the sufficiency of any petition filed with the executive officer.

(2) Filing and processing applications filed with the commission.

(3) Proceedings undertaken by the commission and any reorganization committee.

(4) Amending a sphere of influence.

(5) Reconsidering a resolution making determinations.

(b) The schedule of fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to Section 66016.

(c) The commission may require that a fee be deposited with the

executive officer before any further action is taken. The deposit of the fee shall be made within the time period specified by the commission. No petition shall be deemed filed until the fee has been deposited.

SEC. 7. Section 65104 of the Government Code is amended to read:

65104. The legislative body shall provide the funds, equipment, and accommodations necessary or appropriate for the work of the planning agency. If the legislative body, including that of a charter city, establishes any fees to support the work of the planning agency, the fees shall not exceed the reasonable cost of providing the service for which the fee is charged. The legislative body shall impose the fees pursuant to Section 66016.

SEC. 8. Section 65354.5 of the Government Code is amended to read:

65354.5. (a) A city or county with a planning agency, other than the legislative body itself, which has the authority to consider and recommend the approval, conditional approval, or disapproval of a proposed amendment to a general plan, shall establish procedures for any interested party to file a written request for a hearing by the legislative body with its clerk within five days after the planning agency acts on the proposed amendment. Notice of the hearing shall be given pursuant to Section 65090.

(b) The legislative body may establish a fee to cover the cost of establishing the procedures and conducting the hearing pursuant to subdivision (a). The legislative body shall impose the fee pursuant to Section 66016.

SEC. 9. Section 65358 of the Government Code is amended to read:

65358. (a) If it deems it to be in the public interest, the legislative body may amend all or part of an adopted general plan. An amendment to the general plan shall be initiated in the manner specified by the legislative body. Notwithstanding Section 66016, a legislative body that permits persons to request an amendment of the general plan may require that an amount equal to the estimated cost of preparing the amendment be deposited with the planning agency prior to the preparation of the amendment.

(b) Except as otherwise provided in subdivision (c) or (d), no mandatory element of a general plan shall be amended more frequently than four times during any calendar year. Subject to that limitation, an amendment may be made at any time, as determined by the legislative body. Each amendment may include more than one change to the general plan.

(c) The limitation on the frequency of amendments to a general plan contained in subdivision (b) does not apply to amendments of the general plan requested and necessary for a single development of residential units, at least 25 percent of which will be occupied by or available to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code. The

specified percentage of low- or moderate-income housing may be developed on the same site as the other residential units proposed for development, or on another site or sites encompassed by the general plan, in which case the combined total number of residential units shall be considered a single development proposal for purposes of this section.

(d) This section does not apply to the adoption of any element of a general plan or to the amendment of any element of a general plan in order to comply with any of the following:

(1) A court decision made pursuant to Article 14 (commencing with Section 65750).

(2) Subdivision (b) of Section 65302.3.

(3) Subdivision (d) of Section 56032 of the Health and Safety Code.

(4) Subdivision (b) of Section 30500 of the Public Resources Code.

SEC. 10. Section 65456 of the Government Code is amended to read:

65456. (a) The legislative body, after adopting a specific plan, may impose a specific plan fee upon persons seeking governmental approvals which are required to be consistent with the specific plan. The fees shall be established so that, in the aggregate, they defray but as estimated do not exceed, the cost of preparation, adoption, and administration of the specific plan, including costs incurred pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. As nearly as can be estimated, the fee charged shall be a prorated amount in accordance with the applicant's relative benefit derived from the specific plan. It is the intent of the Legislature in providing for such fees to charge persons who benefit from specific plans for the costs of developing those specific plans which result in savings to them by reducing the cost of documenting environmental consequences and advocating changed land uses which may be authorized pursuant to the specific plan.

(b) Notwithstanding Section 66016, a city or county may require a person who requests adoption, amendment, or repeal of a specific plan to deposit with the planning agency an amount equal to the estimated cost of preparing the plan, amendment, or repeal prior to its preparation by the planning agency.

(c) Copies of the documents adopting or amending the specific plan, including the diagrams and text, shall be made available to local agencies, and shall be made available to the general public as follows:

(1) Within one working day following the date of adoption, the clerk of the legislative body shall make the documents adopting or amending the plan, including the diagrams and text, available to the public for inspection.

(2) Within two working days after receipt of a request for a copy of the documents adopting or amending the plan, including the diagrams and text, accompanied by payment for the reasonable cost of copying, the clerk shall furnish the requested copy to the person making the request.

(d) A city or county may charge a fee for a copy of a specific plan or amendments to a specific plan in an amount that is reasonably related to the cost of providing that document.

SEC. 11. Section 65863.7 of the Government Code is amended to read:

65863.7. (a) Prior to the conversion of a mobilehome park to another use, except pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a mobilehome park or cessation of use of the land as a mobilehome park, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced mobilehome park residents, the report shall address the availability of adequate replacement housing in mobilehome parks and relocation costs.

(b) The person proposing the change in use shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at least 15 days prior to the hearing, if any, on the impact report by the advisory agency, or if there is no advisory agency, by the legislative body.

(c) When the impact report is filed prior to the closure or cessation of use, the person or entity proposing the change shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at the same time as the notice of the change is provided to the residents pursuant to paragraph (2) of subdivision (f) of Section 798.56 of the Civil Code.

(d) When the impact report is filed prior to the closure or cessation of use, the person or entity filing the report or park resident may request, and shall have a right to, a hearing before the legislative body on the sufficiency of the report.

(e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation.

(f) If the closure or cessation of use of a mobilehome park results from an adjudication of bankruptcy, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to Section 66016 to cover any costs incurred by the local agency in implementing this section and Section 65863.8. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning

variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

SEC. 11.5. Section 65863.7 of the Government Code is amended to read:

65863.7. (a) Prior to the conversion of a mobilehome park to another use, except pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a mobilehome park or cessation of use of the land as a mobilehome park, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced mobilehome park residents, the report shall address the availability of adequate replacement housing in mobilehome parks and relocation costs.

(b) The person proposing the change in use shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at least 15 days prior to the hearing, if any, on the impact report by the advisory agency, or if there is no advisory agency, by the legislative body.

(c) When the impact report is filed prior to the conversion, closure, or cessation of use, the person or entity proposing the change shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at the same time as the notice of the change is provided to the residents pursuant to paragraph (2) of subdivision (f) of Section 798.56 of the Civil Code.

(d) When the impact report is filed prior to the conversion, closure, or cessation of use, the person or entity filing the report or park resident may request, and shall have a right to, a hearing before the legislative body on the sufficiency of the report.

(e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation. As used in this section, the reasonable costs of relocation may include the lesser cost of the following, as determined by the legislative body or its delegated advisory agency:

(1) Where another mobilehome park can be found to relocate a displaced mobilehome within 10 miles of the park subject to conversion, closure, or cessation of use, the cost of relocating a displaced park resident's mobilehome, accessories, and possessions to a comparable mobilehome space in another park within 10 miles,

including removal, transportation, and reinstallation of the mobilehome and accessories at the new site, indemnification for any damage to personal property of the resident caused by the relocation, reasonable living expenses of displaced park residents from the date of actual displacement until the date of occupancy at the new site, payment of any security deposit required at the new site and the difference between the rent paid in the existing park and any higher rent at the new site for the first 12 months of the relocated tenancy.

(2) The cost of purchasing a mobilehome of a displaced mobilehome owner at a value to be determined. Where the mobilehome cannot be relocated due to age or condition, as determined by the local legislative body or advisory agency, this paragraph may apply.

(f) If the closure or cessation of use of a mobilehome park results from an adjudication of bankruptcy, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to Section 66016 to cover any costs incurred by the local agency in implementing this section and Section 65863.8. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

SEC. 12. Section 65909.5 of the Government Code is amended to read:

65909.5. The legislative body of any county or city, including a charter city, may establish reasonable fees for the processing of use permits, zone variances, or zone changes pursuant to the procedures required or authorized by this chapter or local ordinance, but the fees shall not exceed the amount reasonably required to administer the processing of such permits or zone variances. The fees shall be imposed pursuant to Sections 66014 and 66016.

SEC. 13. Section 65962 of the Government Code is repealed.

SEC. 14. Section 66000 of the Government Code is amended to read:

66000. As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction, other than a tax or special

assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(d) "Public facilities" includes public improvements, public services, and community amenities.

SEC. 15. Section 66004 of the Government Code is amended to read:

66004. The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Section 66018.

SEC. 16. Section 66008 of the Government Code is repealed.

SEC. 17. Section 66009 of the Government Code is repealed.

SEC. 18. Section 66010 of the Government Code is amended to read:

66010. As used in this chapter:

(a) "Development project" means a development project as defined in Section 66000.

(b) "Fee" means a monetary exaction or a dedication, other than a tax or special assessment, which is required by a local agency of the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees for processing applications for governmental regulatory actions or approvals.

(c) "Local agency" means a local agency, as defined in Section 66000.

(d) "Public facilities" means public facilities, as defined in Section 66000.

(e) "Reconstruction" means the reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction.

SEC. 19. Chapter 7 (commencing with Section 66012) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 7. FEES FOR SPECIFIC PURPOSES

66012. (a) Notwithstanding any other provision of law which prescribes an amount or otherwise limits the amount of a fee or charge which may be levied by a city, county, or city and county, a city, county, or city and county shall have the authority to levy any fee or charge in connection with the operation of an aerial tramway within its jurisdiction.

(b) If any person disputes whether a fee or charge levied pursuant to subdivision (a) is reasonable, the auditor, or if there is no auditor, the fiscal officer, of the city, county, or city and county shall, upon request of the legislative body of the city, county, or city and county, conduct a study and determine whether the fee or charge is reasonable.

66013. (a) Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, unless a question regarding the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) As used in this section:

(1) "Sewer connection" means the connection of a building to a public sewer system.

(2) "Water connection" means the connection of a building to a public water system, as defined in subdivision (e) of Section 4010.1 of the Health and Safety Code.

(3) "Capacity charges" means charges for facilities in existence at the time the charge is imposed or charges for new facilities to be constructed in the future which are of benefit to the person or property being charged.

(4) "Local agency" means a local agency as defined in Section 66000.

(c) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion imposing a fee or capacity charge subject to this section shall be brought pursuant to Section 66022.

66014. (a) Notwithstanding any other provision of law, when a local agency charges fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox Local Government Reorganization Act of 1985, Division 3 (commencing with Section 56000) of Title 5; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7; or planning services under the authority of Chapter 3 (commencing with Section

65100) of Division 1 of Title 7 or under any other authority; those fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion authorizing the charge of a fee subject to this section shall be brought pursuant to Section 66022.

SEC. 20. Chapter 8 (commencing with Section 66016) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 8. PROCEDURES FOR ADOPTING VARIOUS FEES

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

66017. (a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures specified in Section 54986 or 66016 and shall be effective no sooner that 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

66018. (a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee to which this section applies, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

(c) This section applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.

(d) As used in this section, "fees" do not include rates or charges for water, sewer, or electrical service.

66018.5. "Local agency," as used in this chapter, has the same meaning as provided in Section 66000.

SEC. 21. Section 66017 of the Government Code is repealed.

SEC. 22. Chapter 9 (commencing with Section 66020) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 9. PROTESTS, LEGAL ACTIONS, AND AUDITS

66020. (a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency by meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development of the residential housing development. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed residential housing development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a residential housing development. Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set

aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a residential housing development by a local agency within 180 days after the date of the imposition. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(g) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

66021. (a) Any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927, or development project, may protest, as provided in Sections 66020 and 66475.4, the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction. If a party files a protest under both Sections 66020 and 66475.4, Section 66475.4 shall prevail over Section 66020 to the extent of any conflict between those two sections.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act which contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

66022. (a) Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of

the increase.

(b) Any action by a local agency or interested person under this section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014.

66023. (a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(e) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(f) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

66024. (a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city,

county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

66025. "Local agency," as used in this chapter, means a local agency as defined in Section 66000.

SEC. 23. Section 4746.5 of the Health and Safety Code is amended to read:

4746.5. Notwithstanding any other provision of law, the Triunfo County Sanitation District may do all of the following:

(a) The district may, within or without the district:

(1) Take real and personal property of every kind, for any district purpose, by grant, purchase, gift, devise, or lease.

(2) Hold, use, enjoy, lease, or dispose of real and personal property of every kind.

(b) The district may lease from any person, or public corporation or agency, with the privilege of purchasing or otherwise, all or any part of any facilities necessary or convenient to any district purpose, either existing or constructed by the lessor for district use.

(c) If funds are needed to meet current expenses of maintenance and operation, the district may incur indebtedness by the issuance of negotiable promissory notes pursuant to this section, without an election. The notes shall be general obligations of the district payable in the same manner as bonds of the district, shall mature not later than two years from the date thereof, and shall bear interest at a rate not to exceed the rate prescribed by Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, payable as provided therein. The aggregate amount of the notes outstanding at any one time shall not exceed an amount equal to seven cents ($0.07) on each one hundred dollars ($100) of the assessed valuation of the taxable real property within the district as shown on the last equalized assessment roll of the county. If the assessed valuation is not obtainable, the county auditor's estimate of the assessed valuation of the taxable real property within the district for the fiscal year in which the indebtedness is to be incurred shall be used.

All the notes shall be issued after the adoption of a resolution by a four-fifths vote of the district board setting forth the following:

(a) The necessity for the borrowing.

(b) The assessed valuation of the taxable real property within the district, or the auditor's estimate thereof.

(c) The amount of funds to be borrowed.

(d) The date, maturity, denomination, and form of such notes.

The notes shall be signed by the chairperson of the district board and countersigned by the county treasurer and the seal of the district board shall be affixed.

The district board shall cause the board of supervisors to levy and

collect taxes to pay the interest on and the principal of the notes as the same comes due and, if the maturity of the notes begins more than one year after the date thereof, to constitute a sinking fund for the payment of the principal thereof at maturity.

Before selling the notes, the district board shall give notice inviting sealed bids in the manner the board prescribes. If satisfactory bids are received, the notes offered for sale shall be awarded to the highest responsible bidder. If no bids are received, or if the district board determines that the bids received are not satisfactory as to price or responsibility of the bidders, the district board may reject all bids received, if any, and either readvertise or sell the notes at private sale.

The district may issue negotiable promissory notes, borrow from the county or a chartered bank, or establish a line of credit with a chartered bank pursuant to this chapter to acquire funds for any district purposes. The promissory notes or indentures shall not mature later than five years from the date of issuance. The maximum rate of interest on the notes shall not exceed the rate prescribed by Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code. The total aggregate amount of the debt outstanding at any time shall not exceed the lesser of four million dollars ($4,000,000) or 3 percent of the total assessed value of all the taxable property in the district, according to the last equalized assessment roll. Promissory notes issued pursuant to Section 4746.5 may be disregarded in computing the aggregate amount of notes that may be issued pursuant to this section.

(d) The district may issue negotiable promissory notes for financing the acquisition of administrative or construction offices and for the acquisition of land for district purposes. The promissory notes shall not mature later than 10 years from the date of issuance. The maximum rate of interest on the notes shall not exceed the rate prescribed by Article 7 (commencing with Section 53530) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code. The total aggregate amount of the notes outstanding at any one time may not exceed the lesser of either two million dollars ($2,000,000) or 1 percent of the total assessed value of all taxable property in the district, according to the last equalized assessment roll. Promissory notes issued pursuant to Section 4746.1 may be disregarded in computing the aggregate amount of notes issued pursuant to this section.

(e) The district may fix on or before the first Monday in August of each fiscal year, a service standby or availability charge in the district, in any portion thereof, in any improvement district, or in any special zone established pursuant to Section 4850, to which a district service, other than sewage or sanitation service, is available, whether the service is actually used or not. The standby charge levied pursuant to this section shall not exceed fifty dollars ($50) per acre or per parcel less than one acre. This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later

enacted statute which is chaptered before January 1, 1998, deletes or extends that date.

(f) On or before the second Monday in August of each year in which a standby charge is to be levied and collected, the secretary shall furnish to the county auditor the parcel number of each parcel of land within any area, zone, or improvement district upon which a charge is to be levied and collected, together with the amount of the standby charge fixed on each parcel of land subject to levy. The board shall direct that at the time and in the manner required by law for the levying of taxes for county purposes, the board of supervisors shall levy, in addition to any other tax, assessment, or charge it levies, a standby charge in the amounts and on the respective parcels identified by the district secretary. All county officers charged with the duty of collecting, receiving, and disbursing taxes shall collect the district's standby charges with the regular tax payments to the county. Charges fixed by the district shall be liens on all the parcels of land against which those charges have been imposed. Liens for those charges shall be of the same force and effect as liens for taxes, and their collection may be enforced in the same manner as provided for the enforcement of liens for county taxes.

(g) In lieu, in whole or in part, of levying taxes pursuant to Section 4815, the district may levy a connection fee for initiating water service to properties requesting this service, pursuant to Section 66013 of the Government Code. The board of directors may require that the connection fees be collected by the county or city building departments in the manner of building permit fees and transmitted to the district within 30 days of their collection. Unless otherwise authorized by law, the connection fee charged to public entity users shall be limited to the actual direct cost incurred by the district in connecting water or sewage service to the properties owned or occupied by the public entity users and shall not include any component for other construction, operation, and maintenance costs.

SEC. 24. Section 17951 of the Health and Safety Code is amended to read:

17951. (a) The governing body of any county or city, including a charter city, may prescribe fees for permits, certificates, or other forms or documents required or authorized by this part or rules and regulations promulgated pursuant thereto.

(b) The governing body of any county or city, including a charter city, or fire protection district, may prescribe fees to defray the costs of enforcement required by this part to be carried out by local enforcement agencies.

(c) The amount of the fees prescribed pursuant to subdivisions (a) and (b) of this section shall not exceed the amount reasonably required to administer or process such permits, certificates, or other forms or documents, or to defray the costs of enforcement required by this part to be carried out by local enforcement agencies, and shall not be levied for general revenue purposes. The fees shall be

imposed pursuant to Section 66016 of the Government Code.

(d) The provisions of this part are not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed by the State Building Standards Code or the provisions of this part, provided any such alternate has been approved.

The building department of any city or county may approve any such alternate if it finds that the proposed design is satisfactory and that the material, appliance, installation, device, arrangement, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the State Building Standards Code or the provisions of this part in performance, safety, and for the protection of life and health.

The building department of any city or county shall require evidence that any material, appliance, installation, device, arrangement, or method of construction conforms to, or that the proposed alternate is at least equivalent to, the requirements of this part, building standards published in the State Building Standards Code, or the other rules and regulations promulgated pursuant to the provisions of this part and in order to substantiate claims for alternates, the building department of any city or county may require tests as proof of compliance to be made at the expense of the owner or the owner's agent by an approved testing agency.

SEC. 25. Section 19132.3 of the Health and Safety Code is amended to read:

19132.3. The governing body of any county or city, including a charter city, may adopt an ordinance prescribing fees for filing applications pursuant to this chapter, but the fees shall not exceed the amount reasonably required by the local enforcement agency to issue permits pursuant to this chapter, and shall not be levied for general revenue purposes. The fees shall be imposed pursuant to Section 66016 of the Government Code. Where the Department of Housing and Community Development is the enforcement agency, the Commission of Housing and Community Development may establish a schedule of fees to pay the cost of administration and enforcement of this chapter. All rules and regulations promulgated by the commission under the authority of this part shall be promulgated pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 26. Section 19852 of the Health and Safety Code is amended to read:

19852. The governing body of a county or city, including a charter city, may prescribe such fees as will pay the expenses incurred by the building department of such city or county in maintaining the official copy of the plans of buildings for which it has issued a building permit, but the fees shall not exceed the amount reasonably required by the building department in maintaining the official copy of the plans of buildings for which it has issued a building permit. The fees shall be imposed pursuant to Section 66016 of the

Government Code.

SEC. 27. Section 21671.5 of the Public Utilities Code is amended to read:

21671.5. (a) Except for the terms of office of the members of the first commission, the term of office of each member shall be four years and until the appointment and qualification of his or her successor. The members of the first commission shall classify themselves by lot so that the term of office of one member is one year, of two members is two years, of two members is three years, and of two members is four years. The body which originally appointed a member whose term has expired shall appoint his or her successor for a full term of four years. Any member may be removed at any time and without cause by the body appointing him or her. The expiration date of the term of office of each member shall be the first Monday in May in the year in which his or her term is to expire. Any vacancy in the membership of the commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant. The chairperson of the commission shall be selected by the members thereof.

(b) Compensation, if any, shall be determined by the board of supervisors.

(c) Staff assistance, including the mailing of notices and the keeping of minutes, and necessary quarters, equipment, and supplies shall be provided by the county. The usual and necessary operating expenses of the commission shall be a county charge.

(d) Notwithstanding any other provisions of this article, the commission shall not employ any personnel either as employees or independent contractors without the prior approval of the board of supervisors.

(e) The commission shall meet at the call of the commission chairperson or at the request of the majority of the commission members. A majority of the commission members shall constitute a quorum for the transaction of business. No action shall be taken by the commission except by the recorded vote of a majority of the full membership.

(f) The commission may establish a schedule of fees for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of Section 21675. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to Section 66016 of the Government Code. After June 30, 1991, a commission which has not adopted the comprehensive land use plan required by Section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan.

SEC. 28. Section 77.1 of the Antelope Valley-East Kern Water Agency Law (Chapter 2146 of the Statutes of 1959) is amended to read:

SEC. 77.1. (a) In addition to other powers provided in this act, the agency may establish and impose a one-time facility capacity fee as provided in Section 66013 of the Government Code, which is in the nature of a connection fee, for the right to make a new retail connection to the water distribution system of any retail water distributor within the agency which obtains all or a portion of its water supplies from the agency. The consumer for which the retail connection is made shall be liable for the fee. Fees shall be adopted, established, and imposed only if the board of directors of the agency complies with this section and Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code, and it shall not be necessary for the retail water distributor to comply with these provisions separately. However, a facility capacity fee may not be imposed within a retail water distributor's jurisdiction unless the appropriate retail water distributor enters into an agreement with the agency.

Prior to imposing the fee, the board of directors shall assess the sufficiency of (1) existing facilities for water importation, production, treatment, transportation, and delivery, (2) related works and real property, and (3) water supplies. Sufficiency shall be defined as meeting and not exceeding existing and anticipated demand of the retail agencies served by the agency.

(b) If the board determines that existing facilities, related works and real property, and water supplies are not sufficient, the board may do the following:

(1) Adopt plans for the following:

(A) Obtaining or constructing additional facilities, works, real property, and supplies of water.

(B) Increasing or enlarging existing capacity and facilities for obtaining, importing, producing, treating, storing, and delivering the additional quantity of water.

(C) Financing the cost of acquiring or constructing those facilities, works, property, improvements, and supplies of water and for allocating that cost among lands within the agency.

(D) Allocating water supplies and capacity in existing and future planned facilities.

(2) Establish facility capacity fees, if any, which shall be imposed to finance the cost of acquiring or constructing facilities, works, real property, and supplies of water to satisfy anticipated demand.

(c) The board may contract for the collection of the fee with either of the following:

(1) The counties or cities within the agency for the collection of the fee along with fees related to the improvement of property.

(2) The retail water distributor.

(d) Any action taken by the board of directors pursuant to this section shall be by resolution.

SEC. 29. It is the intent of the Legislature that nothing in this bill shall alter the provisions of Chapter 13.7 (commencing with Section 54999) of Part 1 of Division 2 of Title 5 of the Government Code.

SEC. 30. Section 11.5 of this bill incorporates amendments to Section 65863.7 of the Government Code proposed by both this bill and SB 399. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 65863.7 of the Government Code, and (3) this bill is enacted after SB 399, in which case Section 11 of this bill shall not become operative.

SEC. 31. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1573

An act to amend Sections 66901, 69510, and 69511.5 of the Education Code, relating to postsecondary education.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 66901 of the Education Code is amended to read:

66901. There is hereby created the California Postsecondary Education Commission, which shall be advisory to the Governor, the Legislature, other appropriate governmental officials, and institutions of postsecondary education. The commission shall be composed of the following members:

(a) One representative of the Regents of the University of California designated by the regents, one representative of the Trustees of the California State University designated by the trustees, and one representative of the Board of Governors of the California Community Colleges designated by the board. Representatives of the regents, the trustees, and the board of governors shall be chosen from among the appointed members of their respective boards, but in no instance shall an ex officio member of a governing board serve on the commission.

(b) One representative of the independent California colleges and universities which are formed and operated as nonprofit corporations in this state and are accredited by a regional association which is recognized by the United States Department of Education. This member shall be appointed by the Governor from a list or lists submitted by an association or associations of those institutions.

(c) The chair or the designee of the chair of the Council for Private Postsecondary and Vocational Education.

(d) The President of the State Board of Education or his or her designee from among the other members of the board.

(e) Nine representatives of the general public appointed as follows: three by the Governor, three by the Senate Rules Committee, and three by the Speaker of the Assembly. It is the intent of the Legislature that the commission be broadly and equitably representative of the general public in the appointment of its public members and that the appointing authorities, therefore, shall confer to assure that their combined appointments include adequate representation on the basis of sex and on the basis of the significant racial, ethnic, and economic groups in the state.

(f) Two student representatives, each of whom shall be enrolled at a California postsecondary education institution at the time of appointment and during the term of service, except that a student member who graduates from an institution with no more than six months of his or her term remaining shall be permitted to serve for the remainder of the term. The Governor shall appoint the student members from persons nominated by the appropriate student organizations of each of the postsecondary education segments. For each student member of the commission, the appropriate student organization may submit a list of nominees. The list shall specify not less than three and not more than five nominees. The appropriate student organization for each segment shall be a composite group of at least five representative student government associations, as determined by the commission.

(g) The student member appointed to the commission shall not be enrolled in the same segment as the outgoing student member or in the same segment of the other sitting student member.

(h) No person who is employed by any institution of public or private postsecondary education shall be appointed to or serve on the commission, except that a person who is not a permanent, full-time employee and who has part-time teaching duties which do not exceed six hours per week may be appointed to and serve on the commission.

The commission members designated in subdivisions (a), (c), and (d) shall serve at the pleasure of their respective appointing authorities. The member designated in subdivision (b) shall serve a three-year term. The members designated in subdivision (e) shall each serve a six-year term. The members designated in subdivision (f) shall each serve a two-year term. The respective appointing authority may appoint an alternate for each member who may, during the member's absence, serve on the commission and vote on matters before the commission. When vacancies occur prior to expiration of terms, the respective appointing authority may appoint a member for the remainder of the term.

Any person appointed pursuant to this section may be reappointed to serve additional terms.

Any person appointed pursuant to this section who no longer has the position which made him or her eligible for appointment may nonetheless complete his or her term of office on the commission.

No person appointed pursuant to this section shall, with respect to any matter before the commission, vote for or on behalf of, or in any way exercise the vote of, any other member of the commission.

The commission shall meet as often as it deems necessary to carry out its duties and responsibilities.

Any member of the commission who in any calendar year misses more than one-third of the meetings of the full commission forfeits his or her office, thereby creating a vacancy.

The commission shall select a chair from among the members representing the general public. The chair shall hold office for a term of one year and may be selected to successive terms.

There is established an advisory committee to the commission and the director, consisting of the chief executive officers of each of the public segments, or their designees, the Superintendent of Public Instruction or his or her designee, and an executive officer from each of the groups of institutions designated in subdivisions (b) and (c) to be designated by the respective commission representative from these groups. Commission meeting agenda items and associated documents shall be provided to the committee in a timely manner for its consideration and comments.

The commission may appoint any subcommittees or advisory committees it deems necessary to advise the commission on matters of educational policy. The advisory committees may consist of commission members or nonmembers, or both, including students, faculty members, segmental representatives, governmental representatives, and representatives of the public.

The commission shall appoint and may remove a director in the manner hereinafter specified. The director shall appoint persons to any staff positions the commission may authorize.

The commission shall prescribe rules for the transaction of its own affairs, subject, however, to all the following requirements and limitations:

(1) The votes of all representatives shall be recorded.

(2) Effective action shall require the affirmative vote of a majority of all the duly appointed members of the commission, not including vacant commission seats.

(3) The affirmative votes of two-thirds of all the duly appointed members of the commission, not including vacant commission seats, shall be necessary to the appointment of the director.

SEC. 2. Section 69510 of the Education Code is amended to read:

69510. The Student Aid Commission shall be composed of the following 15 members:

(a) One representative from public, proprietary, or nonprofit postsecondary schools located in California.

(b) One representative from a California independent college or university.

(c) One representative each from the University of California, the California State University, and the California Community Colleges.

(d) Two members each of whom shall be a student enrolled in a California postsecondary educational institution at the time of appointment, and shall be enrolled in a California postsecondary educational institution for the duration of the term. A student member who graduates from an institution with no more than six months of his or her term remaining shall be permitted to serve for the remainder of the term.

(e) Three public members.

(f) One representative from a California secondary school.

(g) Two representatives appointed by the Senate Rules Committee.

(h) Two representatives appointed by the Speaker of the Assembly.

SEC. 3. Section 69511.5 of the Education Code is amended to read:

69511.5. (a) Notwithstanding Section 69511, the Governor shall appoint each student member of the Student Aid Commission pursuant to subdivision (d) of Section 69510 from the persons nominated in accordance with the provisions of subdivision (b).

(b) For each student member of the commission, the appropriate student organization may submit a list of nominees. The list shall specify not less than three and not more than five nominees. The appropriate student organization for each segment shall be a composite group of at least five representative student government associations, as determined by the commission.

(c) The student member appointed to the commission shall not be enrolled in the same segment as the outgoing student member or in the same segment of the other sitting student member.

(d) Participating student organizations designated in subdivision (b) shall inform students within their respective segment of pending student vacancies on the commission.

(e) The person appointed as a student member of the Student Aid Commission pursuant to this section shall be subject to confirmation by the Senate as required in subdivision (d) of Section 69511.

CHAPTER 1574

An act to amend Section 25299.60 of, and to add Sections 25297.1 and 25299.79 to, the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 25297.1 is added to the Health and Safety Code, to read:

25297.1. (a) In addition to the authority granted to the board pursuant to Division 7 (commencing with Section 13000) of the Water Code and to the department pursuant to Chapter 6.8 (commencing with Section 25300), the board, in cooperation with the department, shall develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies. The board shall select local agencies for participation in the program from among those local agencies which apply to the board, giving first priority to those local agencies which have demonstrated prior experience in cleanup, abatement, or other actions necessary to remedy the effects of unauthorized releases of hazardous substances from underground storage tanks. The board shall select only those local agencies which have implemented this chapter and which have begun to collect and transmit to the board the surcharge or fees pursuant to subdivision (b) of Section 25287.

(b) In implementing the local oversight program described in subdivision (a), the board may enter into an agreement with any local agency to perform, or cause to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank with respect to which the local agency has enforcement authority pursuant to this section. The board shall not enter into an agreement with a local agency for soil contamination cleanup or for groundwater contamination cleanup unless the board determines that the local agency has a demonstrated capability to oversee or perform the cleanup. The implementation of the cleanup, abatement, or other action shall be consistent with procedures adopted by the board pursuant to subdivision (d) and shall be based upon cleanup standards specified by the board or regional board.

(c) The board shall provide funding to a local agency which enters into an agreement pursuant to subdivision (b) for the reasonable costs incurred by the local agency in overseeing any cleanup, abatement, or other action taken by a responsible party to remedy the effects of unauthorized releases from underground storage tanks.

(d) The board shall adopt administrative and technical procedures, as part of the state policy for water quality control adopted pursuant to Section 13140 of the Water Code, for cleanup and abatement actions taken pursuant to this section. The procedures shall include, but not be limited to, all of the following:

(1) Guidelines as to which sites may be assigned to the local agency.

(2) The content of the agreements which may be entered into by the state board and the local agency.

(3) Procedures by which a responsible party may petition the board for review, pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 of the Water Code, actions or decisions of the local agency in implementing the cleanup, abatement, or other action.

(4) Protocols for assessing and recovering money from responsible parties for any reasonable and necessary costs incurred by the local agency in implementing this section, as specified in subdivision (i).

(5) Quantifiable measures to evaluate the outcome of a pilot program established pursuant to this section.

(e) Any agreement between the board and a local agency to carry out a local oversight program pursuant to this section shall require both of the following:

(1) The local agency shall establish and maintain accurate accounting records of all costs it incurs pursuant to this section and shall periodically make these records available to the board. The Controller may annually audit these records to verify the hourly oversight costs charged by a local agency. The board shall reimburse the Controller for the cost of the audits of a local agency's records conducted pursuant to this section.

(2) The board and the department shall make reasonable efforts to recover costs incurred pursuant to this section from responsible parties, and may pursue any available legal remedy for this purpose.

(f) The board shall develop a system for maintaining a data base for tracking expenditures of funds pursuant to this section, and shall make this data available to the Legislature upon request.

(g) (1) Sections 25355.5 and 25356 do not apply to expenditures from the Hazardous Substance Cleanup Fund for oversight of abatement of releases from underground storage tanks as part of the local oversight program established pursuant to this section.

(2) A local agency which enters into an agreement pursuant to subdivision (b), shall notify the responsible party, for any site subject to a cleanup, abatement, or other action taken pursuant to the local oversight program established pursuant to this section, that the responsible party is liable for not more than 150 percent of the total amount of site-specific oversight costs actually incurred by the local agency.

(h) Any aggrieved person may petition the board for review of the action or failure to act of a local agency, which enters into an

agreement pursuant to subdivision (b), at a site subject to cleanup, abatement, or other action conducted as part of the local oversight program established pursuant to this section, in accordance with the procedures adopted by the board pursuant to subdivision (d).

(i) (1) For purposes of this section, site-specific oversight costs include only the costs of the following activities, when carried out by technical program staff of a local agency and their immediate supervisors:

(A) Responsible party identification and notification.

(B) Site visits.

(C) Sampling activities.

(D) Meetings with responsible parties or responsible party consultants.

(E) Meetings with the regional board or with other affected agencies regarding a specific site.

(F) Review of reports, workplans, preliminary assessments, remedial action plans, or postremedial monitoring.

(G) Development of enforcement actions against a responsible party.

(H) Issuance of a closure document.

(2) The responsible party is liable for the site-specific oversight costs, calculated pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any cleanup, abatement, or other action taken pursuant to this section to remedy an unauthorized release from an underground storage tank.

(3) Notwithstanding the requirements of any other provision of law, the amount of liability of a responsible party for the oversight costs incurred by the local agency and by the board and regional boards in overseeing any action pursuant to this section shall be calculated as an amount not more than 150 percent of the total amount of the site-specific oversight costs actually incurred by the local agency and shall not include the direct or indirect costs incurred by the board or regional boards.

(4) (A) The total amount of oversight costs for which a local agency may be reimbursed shall not exceed one hundred fifteen dollars ($115) per hour, multiplied by the total number of site-specific hours performed by the local agency.

(B) The total amount of the costs per site for administration and technical assistance to local agencies by the board and the regional board entering into agreements pursuant to subdivision (b) shall not exceed a combined total of thirty-five dollars ($35) for each hour of site-specific oversight. The board shall base its costs on the total hours of site-specific oversight work performed by all participating local agencies. The regional board shall base its costs on the total number of hours of site-specific oversight costs attributable to the local agency which received regional board assistance.

(C) The amounts specified in subparagraphs (A) and (B) are base rates for the 1990–91 fiscal year. Commencing July 1, 1991, and for each fiscal year thereafter, the board shall adjust the base rates

annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the implicit price deflator for state and local government purchases of goods and services, as published by the United States Department of Commerce or by a successor agency of the federal government.

(5) In recovering costs from responsible parties for costs incurred under this section, the local agency shall prorate any costs identifiable as startup costs over the expected number of cases which the local agency will oversee during a 10-year period. A responsible party who has been assessed startup costs for the cleanup of any unauthorized release which, as of January 1, 1991, is the subject of oversight by a local agency, shall receive an adjustment by the local agency in the form of a credit, for the purposes of cost recovery. Startup costs include all of the following expenses:

(A) Small tools, safety clothing, cameras, sampling equipment, and other similar articles necessary to investigate or document pollution.

(B) Office furniture.

(C) Staff assistance needed to develop computer tracking of financial and site-specific records.

(D) Training and setup costs for the first six months of the local agency program.

(6) This subdivision does not apply to costs which are required to be recovered pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8.

SEC. 2. Section 25299.60 of the Health and Safety Code is amended to read:

25299.60. (a) Any costs incurred and payable from the fund pursuant to subdivisions (c), (e), and (h) of Section 25299.51 shall be recovered by the Attorney General, upon request of the board, from the owner or operator of the underground storage tank which released the petroleum and which is the subject of these costs.

(b) The liability of an owner or operator shall be the full and total costs specified in subdivision (a) if the owner or operator has not complied with the requirements of Article 3 (commencing with Section 25299.30) or Article 4 (commencing with Section 25299.36).

(c) The amount of costs determined pursuant to this section shall be recoverable in a civil action. This section does not deprive a party of any defense the party may have.

(d) Moneys recovered by the Attorney General pursuant to this section shall be deposited in the fund.

SEC. 3. Section 25299.79 is added to the Health and Safety Code, to read:

25299.79. The costs specified in subdivision (d) of Section 25299.51 are not recoverable pursuant to this article.

CHAPTER 1575

An act to add Chapter 2.8 (commencing with Section 53395) to Part 1 of Division 2 of Title 5 of the Government Code, relating to infrastructure financing districts.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.8 (commencing with Section 53395) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

CHAPTER 2.8. INFRASTRUCTURE FINANCING DISTRICTS

Article 1. General Provisions

53395. (a) The Legislature finds and declares that the state and federal governments have withdrawn in whole or in part from their former role in financing major, regional, or communitywide infrastructure, including highways and interchanges, sewage treatment and water reclamation works, water supply and treatment works, flood control and drainage works, schools, libraries, parks, and open space.

(b) The Legislature further finds and declares that the methods available to local agencies to finance public works often place an undue and unfair burden on buyers of new homes, especially for public works that benefit the broader community.

(c) The Legislature further finds and declares that the absence of practical and equitable methods for financing both regional and local public works leads to a declining standard of public works, a reduced quality of life for affected citizens, increased objection to otherwise desirable development, and excessive costs for homebuyers.

(d) The Legislature further finds and declares that it is equitable and in the public interest to provide alternative procedures for financing public works and services needed to meet the needs of new housing and other development projects.

53395.1. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

(a) "Affected taxing entity" means any governmental taxing agency which levied or had levied on its behalf a property tax on all or a portion of the property located in the proposed district in the fiscal year prior to the designation of the district, but not including any county office of education, school district, or community college district.

(b) "City" means a city, a county, or a city and county.

(c) "Debt" means any binding obligation to repay a sum of

money, including obligations in the form of bonds, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals.

(d) "Designated official" means the city engineer or other appropriate official designated pursuant to Section 53395.13.

(e) "District" means an infrastructure financing district.

(f) "Infrastructure financing district" means a legally constituted governmental entity established pursuant to this chapter for the sole purpose of financing public facilities.

(g) "Landowner" or "owner of land" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of the land by the legislative body. The legislative body has no obligation to obtain other information as to the ownership of land, and its determination of ownership shall be final and conclusive for the purposes of this chapter. A public agency is not a landowner or owner of land for purposes of this chapter.

(h) "Legislative body" means the city council or board of supervisors.

53395.2. (a) The revenues available pursuant to Article 3 (commencing with Section 53396) may be used directly for work allowed pursuant to Section 53395.3, may be accumulated for a period not to exceed five years to provide a fund for that work, may be pledged to pay the principal of, and interest on, bonds issued pursuant to Article 4 (commencing with Section 53397), or may be pledged to pay the principal of, and interest on, bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) or the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311)), the proceeds of which have been or will be used entirely for allowable purposes of the district. The revenue of the district may also be advanced for allowable purposes of the district to an Integrated Financing District established pursuant to Chapter 1.5 (commencing with Section 53175), in which case the district may be party to a reimbursement agreement established pursuant to that chapter. The revenues of the district may also be committed to paying for any completed public facility acquired pursuant to Section 53395.3 over a period of time, including the payment of a rate of interest not to exceed the bond buyer index rate on the day that the agreement to repay is entered into by the city.

(b) The legislative body may enter into an agreement with any affected taxing entity providing for the construction of, or assistance in, financing public facilities.

53395.3. (a) A district may finance (1) the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer which satisfies the requirements of subdivision (b), (2) may finance planning and design work which is directly related to

the purchase, construction, expansion, or rehabilitation of that property and (3) the costs described in Sections 53395.5, and 53396.5. A district may only finance the purchase of facilities for which construction has been completed, as determined by the legislative body. The facilities need not be physically located within the boundaries of the district. A district may not finance routine maintenance, repair work, or the costs of ongoing operation or providing services of any kind.

(b) The district shall finance only public capital facilities of communitywide significance, which provide significant benefits to an area larger than the area of the district, including, but not limited to, all of the following:

(1) Highways, interchanges, ramps and bridges, arterial streets, and transit facilities.

(2) Sewage treatment and water reclamation plants and interceptor pipes.

(3) Facilities for the collection and treatment of water for urban uses.

(4) Flood control levees and dams, retention basins, and drainage channels.

(5) Child care facilities.

(6) Libraries.

(7) Parks, recreational facilities, and open space.

(8) Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles.

(c) Any district which constructs dwelling units shall set aside not less than 20 percent of those units to increase and improve the community's supply of low- and moderate-income housing available at an affordable housing cost, as defined by Section 50052.5 of the Health and Safety Code, to persons and families of low- and moderate-income, as defined in Section 50093 of the Health and Safety Code.

53395.4. (a) A district may not include any portion of a redevelopment project area which is or has been previously created pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, whether the creation is or was proper or improper. A redevelopment project area may not include any portion of a district created pursuant to this chapter.

(b) A district may finance only the facilities or services authorized in this chapter to the extent that the facilities or services are in addition to those provided in the territory of the district before the district was created. The additional facilities or services may not supplant facilities or services already available within that territory when the district was created but may supplement those facilities and services as needed to serve new developments.

(c) A district may include areas which are not contiguous.

53395.5. It is the intent of the Legislature that the area of the districts created be substantially undeveloped, and the establishment of a district should not ordinarily lead to the removal of existing

dwelling units. If, however, any dwelling units are proposed to be removed or destroyed in the course of private development or public works construction within the area of the district, the legislative body shall do all of the following:

(a) Within four years of the removal or destruction, cause or require the construction or rehabilitation, for rental or sale to persons or families of low or moderate income, of an equal number of replacement dwelling units at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, within the territory of the district if the dwelling units removed were inhabited by persons or families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(b) Within four years of the removal or destruction, cause or require the construction or rehabilitation, for rental or sale to persons of low or moderate income, a number of dwelling units which is at least one unit but not less than 20 percent of the total dwelling units removed at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, within the territory of the district if the dwelling units removed or destroyed were not inhabited by persons of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) Provide relocation assistance and make all the payments required by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1, to persons displaced by any public or private development occurring within the territory of the district. This displacement shall be deemed to be the result of public action.

(d) Ensure that removal or destruction of any dwelling units occupied by persons or families of low or moderate income not take place unless and until there are suitable housing units, at comparable cost to the units from which the persons or families were displaced, available and ready for occupancy by the residents of the units at the time of their displacement. The housing units shall be suitable to the needs of these displaced persons or families and shall be decent, safe, sanitary, and otherwise standard dwellings.

53395.6. Any action or proceeding to attack, review, set aside, void, or annul the creation of a district, adoption of an infrastructure financing plan, including a division of taxes thereunder, or an election pursuant to this chapter shall be commenced within 30 days after the enactment of the ordinance creating the district pursuant to Section 53395.23. Consistent with the time limitations of this section, such an action or proceeding with respect to a division of taxes under this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, except that Section 869 of the Code of Civil Procedure shall not apply.

53395.7. An action to determine the validity of the issuance of bonds pursuant to this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. However, notwithstanding the time limits

specified in Section 860 of the Code of Civil Procedure, the action shall be commenced within 30 days after adoption of the resolution pursuant to Section 53397.6 providing for issuance of the bonds if the action is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure. Any appeal from a judgment in that action or proceeding shall be commenced within 30 days after entry of judgment.

53395.8. An infrastructure financing district is a "district" within the meaning of Section 1 of Article XIII A of the California Constitution.

Article 2. Preparation and Adoption of Infrastructure Financing Plans

53395.10. A legislative body of a city may designate one or more proposed infrastructure financing districts pursuant to this chapter. Proceedings for the establishment of a district shall be instituted by the adoption of a resolution of intention to establish the proposed district and shall do all of the following:

(a) State that an infrastructure financing district is proposed to be established under the terms of this chapter and describe the boundaries of the proposed district, which may be accomplished by reference to a map on file in the office of the clerk of the city.

(b) State the type of public facilities proposed to be financed by the district. The district may only finance public facilities authorized by Section 53395.3.

(c) State that incremental property tax revenue from the city and some or all affected taxing entities within the district may be used to finance these public facilities.

(d) Fix a time and place for a public hearing on the proposal.

53395.11. The legislative body shall direct the clerk to mail a copy of the resolution of intention to create the district to each owner of land within the district.

53395.12. The legislative body shall direct the clerk to mail a copy of the resolution to each affected taxing entity.

53395.13. After adopting the resolution pursuant to Section 53395.10, the legislative body shall designate and direct the city engineer or other appropriate official to prepare an infrastructure plan pursuant to Section 53395.14.

53395.14. After receipt of a copy of the resolution of intention to establish a district, the official designated pursuant to Section 53395.13 shall prepare a proposed infrastructure financing plan. The infrastructure financing plan shall be consistent with the general plan of the city within which the district is located and shall include all of the following:

(a) A map and legal description of the proposed district, which may include all or a portion of the district designated by the legislative body in its resolution of intention.

(b) A description of the public facilities required to serve the

development proposed in the area of the district including those to be provided by the private sector, those to be provided by governmental entities without assistance under this chapter, those public improvements and facilities to be financed with assistance from the proposed district, and those to be provided jointly. The description shall include the proposed location, timing, and costs of the public improvements and facilities.

(c) A finding that the public facilities are of communitywide significance and provide significant benefits to an area larger than the area of the district.

(d) A financing section, which shall contain all of the following information:

(1) A specification of the maximum portion of the incremental tax revenue of the city and of each affected taxing entity proposed to be committed to the district for each year during which the district will receive incremental tax revenue. The portion need not be the same for all affected taxing entities. The portion may change over time.

(2) A projection of the amount of tax revenues expected to be received by the district in each year during which the district will receive tax revenues, including an estimate of the amount of tax revenues attributable to each affected taxing entity for each year.

(3) A plan for financing the public facilities to be assisted by the district, including a detailed description of any intention to incur debt.

(4) A limit on the total number of dollars of taxes which may be allocated to the district pursuant to the plan.

(5) A date on which the district will cease to exist, by which time all tax allocation to the district will end. The date shall not be more than 30 years from the date on which the ordinance forming the district is adopted pursuant to Section 53395.23.

(6) An analysis of the costs to the city of providing facilities and services to the area of the district while the area is being developed and after the area is developed. The plan shall also include an analysis of the tax, fee, charge, and other revenues expected to be received by the city as a result of expected development in the area of the district.

(7) An analysis of the projected fiscal impact of the district and the associated development upon each affected taxing entity.

(e) If any dwelling units occupied by persons or families of low or moderate income are proposed to be removed or destroyed in the course of private development or public works construction within the area of the district, a plan providing for replacement of those units and relocation of those persons or families consistent with the requirements of Section 53395.5.

53395.15. The infrastructure financing plan shall be sent to each owner of land within the proposed district and to each affected taxing entity together with any report required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) that pertains to the proposed

public facilities or the proposed development project for which the public facilities are needed, and shall be made available for public inspection. The report shall also be sent to the planning commission and the legislative body.

53395.16. The designated official shall consult with each affected taxing entity, and, at the request of any affected taxing entity, shall meet with representatives of an affected taxing entity. Any affected taxing entity may suggest revisions to the plan.

53395.17. The legislative body shall conduct a public hearing prior to adopting the proposed infrastructure financing plan. The public hearing shall be called no sooner than 60 days after the plan has been sent to each affected taxing entity. In addition to the notice given to landowners and affected taxing entities pursuant to Sections 53395.11 and 53395.12, notice of the public hearing shall be given by publication not less than once a week for four successive weeks in a newspaper of general circulation published in the city in which the proposed district is located. The notice shall state that the district will be used to finance public works, briefly describe the public works, briefly describe the proposed financial arrangements, including the proposed commitment of incremental tax revenue, describe the boundaries of the proposed district and state the day, hour, and place when and where any persons having any objections to the proposed infrastructure financing plan, or the regularity of any of the prior proceedings, may appear before the legislative body and object to the adoption of the proposed plan by the legislative body.

53395.18. At the hour set in the required notices, the legislative body shall proceed to hear and pass upon all written and oral objections. The hearing may be continued from time to time. The legislative body shall consider the recommendations, if any, of affected taxing entities, and all evidence and testimony for and against the adoption of the plan. The legislative body may modify the plan by eliminating or reducing the size and cost of proposed public works, by reducing the amount of proposed debt, or by reducing the portion, amount, or duration of incremental tax revenues to be committed to the district.

53395.19. (a) The legislative body shall not enact a resolution proposing formation of a district and providing for the division of taxes of any affected taxing entity pursuant to Article 3 (commencing with Section 53396) unless a resolution approving the plan has been adopted by the governing body of each affected taxing entity which is proposed to be subject to division of taxes pursuant to Article 3 (commencing with Section 53396) has been filed with the legislative body at or prior to the time of the hearing.

(b) Nothing in this section shall be construed to prevent the legislative body from amending its infrastructure financing plan and adopting a resolution proposing formation of the infrastructure financing district without allocation of the tax revenues of any affected taxing entity which has not approved the infrastructure financing plan by resolution of the governing body of the affected

taxing entity.

53395.20. (a) At the conclusion of the hearing, the legislative body may adopt a resolution proposing adoption of the infrastructure financing plan, as modified, and formation of the infrastructure financing district in a manner consistent with Section 53395.19, or it may abandon the proceedings. If the legislative body adopts a resolution proposing formation of the district, it shall then submit the proposal to create the district to the qualified electors of the proposed district in the next general election or in a special election to be held, notwithstanding any other requirement, including any requirement that elections be held on specified dates, contained in the Elections Code, at least 90 days, but not more than 180 days, following the adoption of the resolution of formation. The legislative body shall provide the resolution of formation, a certified map of sufficient scale and clarity to show the boundaries of the district, and a sufficient description to allow the election official to determine the boundaries of the district to the official conducting the election within three business days after the adoption of the resolution of formation. The assessor's parcel numbers for the land within the district shall be included if it is a landowner election or the district does not conform to an existing district's boundaries and if requested by the official conducting the election. If the election is to be held less than 125 days following the adoption of the resolution of formation, the concurrence of the election official conducting the election shall be required. However, any time limit specified by this section or requirement pertaining to the conduct of the election may be waived with the unanimous consent of the qualified electors of the proposed district and the concurrence of the election official conducting the election.

(b) If at least 12 persons have been registered to vote within the territory of the proposed district for each of the 90 days preceding the close of the hearing, the vote shall be by the registered voters of the proposed district, who need not necessarily be the same persons, with each voter having one vote. Otherwise, the vote shall be by the landowners of the proposed district and each landowner who is the owner of record at the close of the protest hearing, or the authorized representative thereof, shall have one vote for each acre or portion of an acre of land that he or she owns within the proposed district. The number of votes to be voted by a particular landowner shall be specified on the ballot provided to that landowner.

(c) Ballots for the special election authorized by subdivision (a) may be distributed to qualified electors by mail with return postage prepaid or by personal service by the election official. The official conducting the election may certify the proper mailing of ballots by an affidavit, which shall be exclusive proof of mailing in the absence of fraud. The voted ballots shall be returned to the election officer conducting the election not later than the hour specified in the resolution calling the election. However, if all the qualified voters have voted, the election shall be closed.

53395.21. (a) Except as otherwise provided in this chapter, the provisions of law regulating elections of the local agency that calls an election pursuant to this chapter, insofar as they may be applicable, shall govern all elections conducted pursuant to this chapter. Except as provided in subdivision (b), there shall be prepared and included in the ballot material provided to each voter, an impartial analysis pursuant to Section 3781 or 5011 of the Elections Code, arguments and rebuttals, if any, pursuant to Sections 3782 to 3787, inclusive, and 3795 of the Elections Code or pursuant to Sections 5012 to 5016, inclusive, and 5025 of the Elections Code.

(b) If the vote is to be by the landowners of the proposed district, analysis and arguments may be waived with the unanimous consent of all the landowners and shall be so stated in the order for the election.

53395.22. (a) If the election is to be conducted by mail ballot, the election official conducting the election shall provide ballots and election materials pursuant to subdivision (d) of Section 53326 and Section 53327, together with all supplies and instructions necessary for the use and return of the ballot.

(b) The identification envelope for return of mail ballots used in landowner elections shall contain the following:

(1) The name of the landowner.

(2) The address of the landowner.

(3) A declaration, under penalty of perjury, stating that the voter is the owner of record or the authorized representative of the landowner entitled to vote and is the person whose name appears on the identification envelope.

(4) The printed name and signature of the voter.

(5) The address of the voter.

(6) The date of signing and place of execution of the declaration pursuant to paragraph (3).

(7) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

53395.23. After the canvass of returns of any election pursuant to Section 53395.20, the legislative body may, by ordinance, adopt the infrastructure financing plan and create the district with full force and effect of law, if two-thirds of the votes upon the question of creating the district are in favor of creating the district.

53395.24. After the canvass of returns of any election conducted pursuant to Section 53395.20, the legislative body shall take no further action with respect to the proposed infrastructure financing district for one year from the date of the election if the question of creating the district fails to receive approval by two-thirds of the votes cast upon the question.

53395.25. The legislative body may submit a proposition to establish or change the appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of a district to the qualified electors of a proposed or established district. The proposition establishing or changing the

appropriations limit shall become effective if approved by the qualified electors voting on the proposition and shall be adjusted for changes in the cost of living and changes in populations, as defined by subdivisions (b) and (c) of Section 7901, except that the change in population may be estimated by the legislative body in the absence of an estimate by the Department of Finance, and in accordance with Section 1 of Article XIII B of the California Constitution. For purposes of adjusting for changes in population, the population of the district shall be deemed to be at least one person during each calendar year. Any election held pursuant to this section may be combined with any election held pursuant to Section 53395.20 in any convenient manner.

Article 3. Division of Taxes

53396. Any infrastructure financing plan may contain a provision that taxes, if any, levied upon taxable property in the area included within the infrastructure financing district each year by or for the benefit of the State of California, or any affected taxing entity after the effective date of the ordinance adopted pursuant to Section 53395.23 to create the district, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the affected taxing entities upon the total sum of the assessed value of the taxable property in the district as shown upon the assessment roll used in connection with the taxation of the property by the affected taxing entity, last equalized prior to the effective date of the ordinance adopted pursuant to Section 53395.23 to create the district, shall be allocated to, and when collected shall be paid to, the respective affected taxing entities as taxes by or for the affected taxing entities on all other property are paid.

(b) That portion of the levied taxes each year specified in the adopted infrastructure financing plan for the city and each affected taxing entity which has agreed to participate pursuant to Section 53395.19 in excess of the amount specified in subdivision (a) shall be allocated to, and when collected shall be paid into a special fund of, the district for all lawful purposes of the district. Unless and until the total assessed valuation of the taxable property in a district exceeds the total assessed value of the taxable property in the district as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the district shall be paid to the respective affected taxing entities. When the district ceases to exist pursuant to the adopted infrastructure financing plan, all moneys thereafter received from taxes upon the taxable property in the district shall be paid to the respective affected taxing entities as taxes on all other property are paid.

53396.5. All costs incurred by a county in connection with the division of taxes pursuant to Section 53396 for a district shall be paid

by that district.

Article 4. Tax Increment Bonds

53397.1. The legislative body may, by majority vote, initiate proceedings to issue bonds pursuant to this chapter by adopting a resolution stating its intent to issue the bonds.

53397.2. The resolution adopted pursuant to Section 53397.1 shall contain all of the following information:

(a) A description of the facilities to be financed with the proceeds of the proposed bond issue.

(b) The estimated cost of the facilities, the estimated cost of preparing and issuing the bonds, and the principal amount of the proposed bond issuance.

(c) The maximum interest rate and discount on the proposed bond issuance.

(d) The date of the election on the proposed bond issuance and the manner of holding the election.

(e) A determination of the amount of tax revenue available or estimated to be available, for the payment of the principal of, and interest on, the bonds.

(f) A finding that the amount necessary to pay the principal of, and interest on, the proposed bond issuance will be less than, or equal to, the amount determined pursuant to subdivision (e).

53397.4. The clerk of the legislative body shall publish the resolution adopted pursuant to Section 53397.1 once a day for at least seven successive days in a newspaper published in the city or county at least six days a week, or at least once a week for two successive weeks in a newspaper published in the city or county less than six days a week.

If there are no newspapers meeting these criteria, the resolution shall be posted in three public places within the territory of the district for two succeeding weeks.

53397.5. The legislative body shall submit the proposal to issue the bonds to the voters who reside within the district. The election shall be conducted in the same manner as the election to create the district pursuant to Section 53395.20 and the two elections may be consolidated.

53397.6. (a) The bonds may be issued if two-thirds of the voters voting on the proposition vote in favor of issuing the bonds.

(b) If the voters approve the issuance of the bonds as provided by subdivision (a), the legislative body shall proceed with the issuance of the bonds by adopting a resolution which shall provide for all of the following:

(1) The issuance of the bonds in one or more series.

(2) The principal amount of the bonds, which shall be consistent with the amount specified in subdivision (b) of Section 53397.2.

(3) The date the bonds will bear.

(4) The date of maturity of the bonds.

(5) The denomination of the bonds.
(6) The form of the bonds.
(7) The manner of execution of the bonds.
(8) The medium of payment in which the bonds are payable.
(9) The place or manner of payment and any requirements for registration of the bonds.
(10) The terms of call or redemption, with or without premium.

53397.7. If any proposition submitted to the voters pursuant to this chapter is defeated by the voters, the legislative body shall not submit, or cause to be submitted, a similar proposition to the voters for at least one year after the first election.

53397.8. The legislative body may, by majority vote, provide for refunding of bonds issued pursuant to this chapter. However, refunding bonds shall not be issued if the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total net interest cost to maturity on the bonds to be refunded. The legislative body may not extend the time to maturity of the bonds.

53397.9. The legislative body or any person executing the bonds shall not be personally liable on the bonds by reason of their issuance. The bonds and other obligations of a district issued pursuant to this chapter are not a debt of the city, county, or state or of any of its political subdivisions, other than the district, and none of those entities, other than the district, shall be liable on the bonds and the bonds or obligations shall be payable exclusively from funds or properties of the district. The bonds shall contain a statement to this effect on their face. The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation.

53397.10. The bonds may be sold at discount not to exceed 5 percent of par at public sale. At least five days prior to the sale, notice shall be published, pursuant to Section 6061, in a newspaper of general circulation and in a financial newspaper published in the City and County of San Francisco and in the City of Los Angeles. The bonds may be sold at not less than par to the federal government at private sale without any public advertisement.

53397.11. If any member of the legislative body whose signature appears on bonds ceases to be a member of the legislative body before delivery of the bonds, his or her signature is as effective as if he or she had remained in office. Bonds issued pursuant to this chapter are fully negotiable.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1576

An act to amend Sections 11614 and 11713.1 of the Vehicle Code, relating to occupational licensing.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 11614 of the Vehicle Code is amended to read:

11614. No lessor-retailer licensed under this chapter shall do any of the following in connection with any activity for which this license is required:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by oral representation, or in any other manner or means whatever, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or make or disseminate, or cause to be so disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle or sell service so advertised at the price stated therein, or as so advertised.

(b) Advertise or offer for sale in any manner, any vehicle not actually for sale at the premises of the lessor-retailer or available within a reasonable time to the lessor-retailer at the time of the advertisement or offer.

(c) Fail within 48 hours to give, in writing, notification to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(e) Advertise the total price of a vehicle without including all costs to the purchaser at the time of delivery at the lessor-retailer's premises, except sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed thirty-five dollars ($35).

(f) Fail to disclose, in the newspaper display advertisement of a vehicle for sale, that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, or any dealer documentary preparation charge.

For purposes of this subdivision, "newspaper display

advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(g) Advertise or otherwise represent, or knowingly allow to be advertised or represented on the lessor-retailer's behalf or at the lessor-retailer's place of business, that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(h) Refuse to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance pursuant to any statute, and any dealer documentary preparation charge, which charges shall not exceed thirty-five dollars ($35) for the documentary preparation charge and twenty-five dollars ($25) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold or unleased, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(i) Engage in the business for which the licensee is licensed without having in force and effect a bond required by Section 11612.

(j) Engage in the business for which the lessor-retailer is licensed without at all times maintaining a principal place of business and any branch office location required by this chapter.

(k) Permit the use of the lessor-retailer license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or permit the use of the lessor-retailer license, supplies, or books to operate a branch office location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the vehicles sold by, or the business of, or branch office location used by, the person, or has no interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the lessor-retailer license, supplies, or books to engage in the sale of vehicles.

(*l*) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(m) Represent the dealer documentary preparation charge, or certificate of compliance or noncompliance fee, as a governmental fee.

(n) Advertise free merchandise, gifts, or services provided by a lessor-retailer contingent on the purchase of a vehicle. "Free" includes merchandise or services offered for sale at a price less than the lessor-retailer's cost of the merchandise or services.

(o) Advertise vehicles and related goods or services with the intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(p) Use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle.

(q) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(r) Misrepresent the authority of a representative or agent to negotiate the final terms of a transaction.

(s) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(t) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(u) Advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the lessor-retailer has conducted a recent survey showing that the lessor-retailer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

SEC. 1.5. Section 11614 of the Vehicle Code is amended to read:

11614. No lessor-retailer licensed under this chapter shall do any of the following in connection with any activity for which this license is required:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by oral representation, or in any other manner or means whatever, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or make or disseminate, or cause to be so disseminated, any statement as part of a plan or scheme with the intent not to sell any vehicle or sell service so advertised at the price stated therein, or as so advertised.

(b) Advertise or offer for sale in any manner, any vehicle not actually for sale at the premises of the lessor-retailer or available within a reasonable time to the lessor-retailer at the time of the advertisement or offer.

(c) Fail within 48 hours to give, in writing, notification to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(e) Advertise the total price of a vehicle without including all costs to the purchaser at the time of delivery at the lessor-retailer's

premises, except sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute, and any dealer documentary preparation charge. The dealer documentary charge shall not exceed thirty-five dollars ($35).

(f) Fail to disclose, in the newspaper display advertisement of a vehicle for sale, that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, or any dealer documentary preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(g) Advertise or otherwise represent, or knowingly allow to be advertised or represented on the lessor-retailer's behalf or at the lessor-retailer's place of business, that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(h) Refuse to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, finance charges, certificate of compliance or noncompliance pursuant to any statute, and any dealer documentary preparation charge, which charges shall not exceed thirty-five dollars ($35) for the documentary preparation charge and twenty-five dollars ($25) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold or unleased, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(i) Engage in the business for which the licensee is licensed without having in force and effect a bond required by Section 11612.

(j) Engage in the business for which the lessor-retailer is licensed without at all times maintaining a principal place of business and any branch office location required by this chapter.

(k) Permit the use of the lessor-retailer license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the lessor-retailer license, supplies, or books to operate a branch office location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the vehicles sold by, or the business of, or branch office location used by, the person, or has no interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the lessor-retailer license, supplies, or books to engage in the sale of vehicles.

(*l*) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(m) Represent the dealer documentary preparation charge, or certificate of compliance or noncompliance fee, as a governmental fee.

(n) Advertise free merchandise, gifts, or services provided by a lessor-retailer contingent on the purchase of a vehicle. "Free" includes merchandise or services offered for sale at a price less than the lessor-retailer's cost of the merchandise or services.

(o) Advertise vehicles and related goods or services with the intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(p) Use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle.

(q) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(r) Misrepresent the authority of a representative or agent to negotiate the final terms of a transaction.

(s) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(t) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(u) Advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the lessor-retailer has conducted a recent survey showing that the lessor-retailer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(v) To display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

SEC. 2. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is unlawful and a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) To advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) To advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except sales tax, vehicle registration fees, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute, finance

charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed thirty-five dollars ($35).

(c) To exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer documentary preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(d) To represent the dealer documentary preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) To fail to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer documentary preparation charge, which charges shall not exceed thirty-five dollars ($35) for the documentary preparation charge and twenty-five dollars ($25) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) To advertise for sale as new any new vehicle of a line-make for which the dealer does not hold a franchise.

This subdivision does not apply to any transaction involving a mobilehome as defined in Section 396 of this code, a recreational vehicle as defined in Section 18010.5 of the Health and Safety Code, a commercial coach as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification as defined in Section 38012, or a commercial vehicle as defined in Section 260.

(g) To sell a park trailer, as defined in subdivision (f) of Section 799.24 of the Civil Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) To advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) To advertise vehicles and related goods or services with intent not to supply reasonably expectable demand, unless the

advertisement discloses a limitation of quantity.

(j) To use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) To require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(*l*) To advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) To misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) To advertise a vehicle at a specified amount above, below, or at the manufacturer's or distributor's invoice price to the dealer, unless the advertisement clearly and conspicuously states that the invoice amount may exceed the actual dealer cost because of allowances provided to the dealer by the manufacturer or distributor.

(o) To violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) To make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(q) To affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additonal price of each item. If the supplemental sticker price is greater than the sum of the manufactuer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) To advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) To advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

SEC. 2.5. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is unlawful and a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) To advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) To advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except sales tax, vehicle registration fees, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed thirty-five dollars ($35).

(c) To exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer documentary preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(d) To represent the dealer documentary preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) To fail to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer

documentary preparation charge, which charges shall not exceed thirty-five dollars ($35) for the documentary preparation charge and twenty-five dollars ($25) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) To advertise for sale as new any new vehicle of a line-make for which the dealer does not hold a franchise.

This subdivision does not apply to any transaction involving a mobilehome as defined in Section 396 of this code, a recreational vehicle as defined in Section 18010.5 of the Health and Safety Code, a commercial coach as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification as defined in Section 38012, or a commercial vehicle as defined in Section 260.

(g) To sell a park trailer, as defined in subdivision (f) of Section 799.24 of the Civil Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) To advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) To advertise vehicles and related goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(j) To use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) To require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(*l*) To advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) To misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) To advertise a vehicle at a specified amount above, below, or at the manufacturer's or distributor's invoice price to the dealer, unless the advertisement clearly and conspicuously states that the invoice amount may exceed the actual dealer cost because of allowances provided to the dealer by the manufacturer or distributor.

(o) To violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) To make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(q) To affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additonal price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) To advertise any underselling claim, such as "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) To advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) To display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 11614 of the Vehicle Code proposed by both this bill and AB 3243. It shall only become operative if (1) both bills are enacted and

become effective on January 1, 1991, (2) each bill amends Section 11614 of the Vehicle Code, and (3) this bill is enacted after AB 3243, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 11713.1 of the Vehicle Code proposed by both this bill and AB 3243. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 11713.1 of the Vehicle Code, and (3) this bill is enacted after AB 3243, in which case Section 2 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1577

An act to amend Sections 19620, 19621.1, 19622, 19623, 19627, 19627.1, 19627.2, 19627.5, 19628, and 19630 of, to amend and renumber Section 19418 of, to add Sections 19418, 19418.1, 19418.2, and 19418.3 to, and to repeal Sections 19626, 19626.2, 19627.3, 19627.7, and 19627.8 of, the Business and Professions Code, and to repeal Article 2.6 (commencing with Section 16379.5) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code, relating to horseracing, and making an appropriation therefor.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 19418 of the Business and Professions Code is amended and renumbered to read:

19419.9. The provisions of this chapter insofar as they are substantially the same as existing code provisions relating to the same subject matter shall be construed as restatements and continuations thereof, and not as new enactments.

SEC. 2. Section 19418 is added to the Business and Professions Code, to read:

19418. "State designated fairs," referred to in this chapter as California fairs, means the California Exposition and State Fair in the City of Sacramento and those fairs specified in Sections 19418.1,

19418.2, and 19418.3 which receive financial support pursuant to this chapter.

SEC. 3. Section 19418.1 is added to the Business and Professions Code, to read:

19418.1. The district agricultural associations and their locations are as follows:

(1) District 1, held in the City of Oakland.
(2) District 1-A, held in the City of San Francisco.
(3) District 2, held in the City of Stockton.
(4) District 3, held in the City of Chico.
(5) District 4, held in the City of Petaluma.
(6) District 5, held in the City of San Francisco.
(7) District 7, held in the City of Monterey.
(8) District 9, held in the City of Eureka.
(9) District 10, held in the City of Yreka.
(10) District 10-A, held in the City of Tulelake.
(11) District 12, held in the City of Ukiah.
(12) District 13, held in the City of Yuba City.
(13) District 14, held in the City of Watsonville.
(14) District 15, held in the City of Bakersfield.
(15) District 16, held in the City of Paso Robles.
(16) District 17, held in the City of Grass Valley.
(17) District 18, held in the City of Bishop.
(18) District 19, held in the City of Santa Barbara.
(19) District 20, held in the City of Auburn.
(20) District 21, held in the City of Fresno.
(21) District 21-A, held in the City of Madera.
(22) District 22, held in the City of Del Mar.
(23) District 23, held in the City of Antioch.
(24) District 24, held in the City of Tulare.
(25) District 24-A, held in the City of Hanford.
(26) District 25, held in the City of Napa.
(27) District 26, held in the City of Plymouth.
(28) District 27, held in the City of Anderson.
(29) District 28, held in the City of Victorville.
(30) District 29, held in the City of Sonora.
(31) District 30, held in the City of Red Bluff.
(32) District 31, held in the Town of Ventura.
(33) District 32, held in the City of Costa Mesa.
(34) District 33, held in the City of Hollister.
(35) District 34, held in the Town of Cedarville.
(36) District 35, held in the City of Merced.
(37) District 35-A, held in the Town of Mariposa.
(38) District 36, held in the City of Dixon.
(39) District 37, held in the City of Santa Maria.
(40) District 38, held in the City of Turlock.
(41) District 39, held in the Town of Angels Camp.
(42) District 40, held in the City of Woodland.
(43) District 41, held in the City of Crescent City.

(44) District 42, held in the City of Orland.
(45) District 44, held in the City of Colusa.
(46) District 45, held in the City of Imperial.
(47) District 46, held in the City of Perris.
(48) District 48, held in the City of City of Industry.
(49) District 49, held in the City of Lakeport.
(50) District 50, held in the City of Lancaster.
(51) District 51, held in the San Fernando Valley.
(52) District 52, held in the City of Sacramento.
(53) District 53, held in the City of Ridgecrest.
(54) District 54, held in the City of Blythe.

SEC. 4. Section 19418.2 is added to the Business and Professions Code, to read:

19418.2. The county fairs and their locations are as follows:
(1) The Alameda County Fair, held in the City of Pleasanton.
(2) The Butte County Fair, held in the City of Gridley.
(3) The El Dorado County Fair, held in the City of Placerville.
(4) The Humboldt County Fair, held in the City of Ferndale.
(5) The Lassen County Fair, held in the City of Susanville.
(6) The Los Angeles County Fair, held in the City of Pomona.
(7) The Madera County Fair, held in the City of Chowchilla.
(8) The Marin County Fair, held in the City of San Rafael.
(9) The Mendocino County Fair, held in the Town of Boonville.
(10) The Merced County Fair, held in the City of Los Banos.
(11) The Monterey County Fair, held in the City of King City.
(12) The Napa County Fair, held in the City of Calistoga.
(13) The Placer County Fair, held in the City of Roseville.
(14) The Plumas County Fair, held in the Town of Quincy.
(15) The Riverside County Fair, held in the City of Indio.
(16) The San Benito County Fair, held in the City of Hollister.
(17) The San Francisco County Fair, held in the City of San Francisco.
(18) The San Joaquin County Fair, held in the City of Lodi.
(19) The San Mateo County Fair, held in the City of San Mateo.
(20) The Santa Clara County Fair, held in the City of San Jose.
(21) The Shasta County Fair, held in the Town of McArthur.
(22) The Solano County Fair, held in the City of Vallejo.
(23) The Sonoma County Fair, held in the City of Santa Rosa.
(24) The Trinity County Fair, held in the Town of Hayfork.

SEC. 5. Section 19418.3 is added to the Business and Professions Code, to read:

19418.3. The citrus fruit fairs and their locations are as follows:
(1) The Cloverdale Citrus Fair, held in the City of Cloverdale.
(2) The National Orange Show, held in the City of San Bernardino.

SEC. 6. Section 19620 of the Business and Professions Code is amended to read:

19620. (a) From the total revenue received by the board, exclusive of money received pursuant to Sections 19640 and 19641,

the sum of two hundred sixty-five thousand dollars ($265,000) plus an amount equal to 63/100 of 1 percent of the gross amount of money handled in the annual parimutuel pool generated within this state, or the maximum amount received by the state from the parimutuel pool of a racing meeting held in this state, whichever is less, shall be paid into the State Treasury to the credit of the Fair and Exposition Fund. Commencing July 1, 1989, if the revenues paid into the Fair and Exposition Fund under this section are in excess of thirteen million dollars ($13,000,000) in any fiscal year, one-half of the amount in excess of the thirteen million dollars ($13,000,000) shall be transferred to the General Fund.

(b) From the total revenue received by the board, exclusive of money received pursuant to Sections 19640 and 19641, and in addition to the funds paid into the State Treasury to the credit of the Fair and Exposition Fund as specified in subdivision (a), the Legislature shall annually appropriate and the board shall deposit to the credit of the Fair and Exposition Fund, such sums as it deems necessary for the following purposes:

(1) For the support of the board, including any costs and expenses incurred by the Attorney General in the enforcement of this chapter as shall be authorized by the board, including, compensation including any fringe benefits, paid to stewards, to the official veterinarian, and for the costs of laboratory testing related to horseracing pursuant to Section 19442.

(2) To the Department of Food and Agriculture for the supervision of all California fairs receiving money from the fund.

(3) To the Department of Food and Agriculture for the contributions, or the cost of benefits in lieu of contributions, payable to the Unemployment Fund by all California fairs receiving funds pursuant to this article, as a result of unemployment insurance coverage pursuant to Section 605 of the Unemployment Insurance Code.

(4) To the Department of Finance for the auditing of all California fairs receiving money from the fund.

SEC. 7. Section 19621.1 of the Business and Professions Code is amended to read:

19621.1. The Director of Food and Agriculture shall prepare and submit to the Department of Finance an estimate of the contributions, or the cost of benefits in lieu of contributions, that are payable to the Unemployment Fund by all California fairs receiving funds pursuant to this article. The Director of Finance shall include those estimates in the Budget Bill submitted to the Legislature.

SEC. 8. Section 19622 of the Business and Professions Code is amended to read:

19622. (a) The following amounts are hereby annually appropriated out of the fund:

(1) Two hundred sixty-five thousand dollars ($265,000) for the support and administration of the California Exposition and State Fair.

(2) Two hundred fifty thousand dollars ($250,000) for the support and administration of the Los Angeles County Fair.

(3) Two hundred fifty thousand dollars ($250,000) for the support and administration of the 1-A District Agricultural Association.

(4) One hundred seventy-five thousand dollars ($175,000) to the 1-A District Agricultural Association for conducting annually a junior livestock show and exposition for students in California schools, grades K to 12, inclusive.

(5) One hundred fifty thousand dollars ($150,000) for the support and administration of the National Orange Show.

(b) Except as provided in subdivision (c), no fair shall receive any funds appropriated pursuant to this section unless the fair does all of the following:

(1) Files an annual statement of operations with the Department of Food and Agriculture.

(2) Has an annual budget approved by the Department of Food and Agriculture.

(3) Conducts an annual fair which includes agricultural exhibits and competitions.

(c) Paragraph (2) of subdivision (b) does not apply to the California Exposition and State Fair, the Los Angeles County Fair, or the National Orange Show specified in paragraphs (1), (2), and (5) of subdivision (a). Each exposition, fair, or show that receives funds appropriated pursuant to paragraph (1), (2), or (5) of subdivision (a) shall annually submit an audited financial statement to the Division of Fairs of the Department of Food and Agriculture.

SEC. 9. Section 19623 of the Business and Professions Code is amended to read:

19623. The money appropriated pursuant to Section 19622 may be expended for the payment of premiums, for capital outlay purposes, including the purchase of land and equipment for construction and improvements, and for the general support and maintenance of those entities referred to in Section 19622.

SEC. 10. Section 19626 of the Business and Professions Code is repealed.

SEC. 11. Section 19626.2 of the Business and Professions Code is repealed.

SEC. 12. Section 19627 of the Business and Professions Code is amended to read:

19627. (a) Six million five hundred forty-five thousand dollars ($6,545,000) of the first balance of the fund is hereby annually appropriated to the Department of Food and Agriculture for the encouragement of California fairs, exclusive of the entities referred to in Section 19622, and the Sixth District Agricultural Association, known and designated as the California Museum of Science and Industry, to be apportioned by and expended under the supervision of the Department of Food and Agriculture in the manner and for the purpose prescribed by Part 4 (commencing with Section 4401) of Division 3 of the Food and Agricultural Code and other applicable

provisions of law, including this section.

(b) Each California fair shall receive an annual apportionment of eighty-five thousand dollars ($85,000). No fair shall receive this apportionment unless it complies with subdivision (c).

(c) Each California fair shall do all of the following:

(1) File an annual statement of operations with the department.

(2) Have an annual budget approved by the department.

(3) Conduct an annual fair which includes agriculture exhibits and competitions.

(d) The Director of Food and Agriculture, in consultation with fair managers and directors, shall develop an informal appeal process for fairs to appeal any decision apportioning funds.

(e) Funds not allocated pursuant to this section shall be allocated pursuant to Section 19630.

SEC. 13. Section 19627.1 of the Business and Professions Code is amended to read:

19627.1. (a) Three million four hundred sixty-five thousand dollars ($3,465,000) of the first balance of the fund is hereby annually appropriated to the Department of Food and Agriculture for the encouragement of California fairs which receive funds under Section 19627.

(b) Each California fair shall be eligible to receive an additional grant not exceeding forty-five thousand dollars ($45,000) from the department. No fair shall receive this apportionment unless it complies with the requirements of subdivision (c).

(c) Each California fair shall, in addition to meeting the requirements of Section 19627, do both of the following:

(1) Comply with the management and fiscal directives of the department.

(2) Submit an annual maintenance program for approval by the department.

(d) The Director of Food and Agriculture, in consultation with fair managers and directors, shall develop an informal appeal process for fairs to appeal any decision apportioning funds.

(e) Funds not allocated pursuant to this section shall be allocated pursuant to Section 19630.

SEC. 14. Section 19627.2 of the Business and Professions Code is amended to read:

19627.2. The funds made available pursuant to both subdivision (c) of Section 19614 and subdivision (b) of Section 19614.1 shall be allocated by the Director of Food and Agriculture for all of the following activities:

(a) For purposes specified in Section 4401.5 of the Food and Agricultural Code.

(b) For purposes specified in Section 51004 of the Education Code to support student organization activities, approved by an appropriate local educational agency, in the fields of agricultural and vocational education. The Director of Food and Agriculture shall annually invite school districts, the Vocational Education Unit of the

State Department of Education, and California fairs to which this article applies, together and cooperatively, to apply for funding for the purposes specified in Section 51004 of the Education Code.

(c) The Director of Food and Agriculture shall allocate not less than three hundred thousand dollars ($300,000) annually for the purposes specified in subdivision (b).

(d) Funds not allocated pursuant to this section shall be allocated pursuant to Section 19630.

SEC. 15. Section 19627.3 of the Business and Professions Code is repealed.

SEC. 16. Section 19627.5 of the Business and Professions Code is amended to read:

19627.5. Notwithstanding Section 19627, any unanticipated revenues, other than any allocation from the state, which are in excess of the approved budget for any fiscal or calendar year of any California fair shall be retained by that fair and may be expended for any purpose specified in Section 19630. However, the amount retained each budget year pursuant to this section shall not exceed 20 percent of the budgeted revenue.

These funds may be expended, without regard to any fiscal year, by any fair to which Section 19627 applies, upon positive action by the board of directors of that fair, which shall be recorded in the official minutes of the fair approving a plan of expenditure for those funds for the purposes specified in Section 19630.

SEC. 17. Section 19627.7 of the Business and Professions Code is repealed.

SEC. 18. Section 19627.8 of the Business and Professions Code is repealed.

SEC. 19. Section 19628 of the Business and Professions Code is amended to read:

19628. If any California fair has not been, or is not, held in any year because of war conditions, or because the grounds or buildings of the fair have been taken over and occupied by the United States or its armed forces, or that fair is not held due to an act of God, or any unavoidable catastrophe, natural or manmade, that year shall not be considered for the purpose of any requirement of Sections 19622 and 19627 of this code or Section 4603 of the Food and Agricultural Code.

SEC. 20. Section 19630 of the Business and Professions Code is amended to read:

19630. (a) Any unallocated balance from subdivision (a) of Section 19620 or Section 19627 is hereby appropriated without regard to fiscal years for allocation by the Director of Food and Agriculture for capital outlay to California fairs for fair projects involving public health and safety, for fair projects involving major and deferred maintenance, for fair projects necessary due to any emergency, for projects that are required by physical changes to the fair site, for projects that are required to protect the fair property or installation, such as fencing and flood protection, and for the acquisition or

improvement of any property or facility that will serve to enhance the operation of the fair. No funds shall be allocated by the director to the California Exposition and State Fair, the Los Angeles County Fair, and the National Orange Show pursuant to this section.

It is the intent of the Legislature that these moneys be used primarily for those fairs whose sources of revenue may be limited for purposes specified in this section.

(b) Any money subject to allocation pursuant to subdivision (a) may be allocated by the Director of Food and Agriculture to California fairs for general operational support purposes. The limitations as to the maximum amount of apportionment specified in Section 19627 are not applicable to such an allocation.

SEC. 21. Article 2.6 (commencing with Section 16379.5) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code is repealed.

SEC. 22. Sections 19418, 19418.1, 19418.2, and 19418.3 of the Business and Professions Code, as added by this act, shall not affect the interpretation or application of either paragraph (3) of subdivision (b) of Section 19620 or Section 19621.1 of the Business and Professions Code. To that extent, Sections 19418, 19418.1, 19418.2, and 19418.3 of the Business and Professions Code do not constitute a change in, but are declaratory of, the existing law, and the Legislature does not intend to expand or diminish the interpretation or application of paragraph (3) of subdivision (b) of Section 19620 or Section 19621.1.

CHAPTER 1578

An act to amend Section 340.1 of the Code of Civil Procedure, relating to commencement of actions.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 340.1 of the Code of Civil Procedure is amended to read:

340.1. (a) In any civil action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever occurs later.

(b) "Childhood sexual abuse" as used in this section includes any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of 18 years and which

act would have been proscribed by Section 266j of the Penal Code; Section 285 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 286 of the Penal Code; subdivision (a) or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 288a of the Penal Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code; Section 647.6 of the Penal Code; or any prior laws of this state of similar effect at the time the act was committed.

(c) Nothing in this section shall be construed to alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, which a plaintiff has in a civil action subject to this section.

(d) Every plaintiff 26 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision (e).

(e) Certificates of merit shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows, setting forth the facts which support the declaration:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one licensed mental health practitioner who is licensed to practice and practices in this state and who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action, and that the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action. The person consulted may not be a party to the litigation.

(2) That the mental health practitioner consulted is licensed to practice and practices in this state and is not a party to the action, has interviewed the plaintiff and is knowledgeable of the relevant facts and issues involved in the particular action, and has concluded, on the basis of his or her knowledge of the facts and issues, that in his or her professional opinion there is a reasonable basis to believe that the plaintiff had been subject to childhood sexual abuse.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificates required by paragraphs (1) and (2) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificates required by paragraphs (1) and (2) shall be filed within 60 days after filing the complaint.

(f) Where certificates are required pursuant to subdivision (d), separate certificates shall be filed for each defendant named in the complaint.

(g) A complaint filed pursuant to subdivision (d) may not name the defendant or defendants until the court has reviewed the certificates of merit filed pursuant to subdivision (e) and has found, in camera, based solely on those certificates of merit, that there is reasonable and meritorious cause for the filing of the action. At that

time, the complaint may be amended to name the defendant or defendants. The duty to give notice to the defendant or defendants shall not attach until that time.

(h) A violation of this section may constitute unprofessional conduct and may be the grounds for discipline against the attorney.

(i) The failure to file certificates in accordance with this section shall be grounds for a demurrer pursuant to Section 430.10 or a motion to strike pursuant to Section 435.

(j) Upon the favorable conclusion of the litigation with respect to any defendant for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this section, the court may, upon the motion of a party or upon the court's own motion, verify compliance with this section by requiring the attorney for the plaintiff who was required by subdivision (e) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (e) that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number shall be disclosed to the trial judge in an in camera proceeding at which the moving party shall not be present. If the court finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by the defendant for whom a certificate of merit should have been filed.

(k) The amendments to this section enacted at the 1990 portion of the 1989–90 Regular Session shall apply to any action commenced on or after January 1, 1991.

(*l*) Nothing in the amendments specified in subdivision (k) shall be construed to preclude the courts from applying equitable exceptions to the running of the applicable statute of limitations, including exceptions relating to delayed discovery of injuries, with respect to actions commenced prior to January 1, 1991.

CHAPTER 1579

An act to add Section 1226.5 to the Health and Safety Code, relating to seismic safety.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1226.5 is added to the Health and Safety Code, to read:

1226.5. (a) It is the intent of the Legislature to establish seismic safety standards for facilities licensed as surgical clinics pursuant to this chapter, and for facilities certified for participation in the federal

Medicare program as ambulatory surgical centers, which accommodate surgical patients under general anesthesia, but are not required to remain open and usable after an earthquake to accommodate emergency patients.

(b) A facility described in subdivision (a) which, after January 1, 1991, anchors fixed medical equipment to the floor or roof of the facility with a gross operating weight of more than 400 pounds or anchors fixed medical equipment to the walls or ceiling with a gross operating weight of more than 20 pounds shall retain the services of an architect licensed in California, a structural engineer licensed in California, or a civil engineer registered in California to assure that the equipment is anchored in such a manner to meet the requirements of an occupancy importance factor of 1.00, as set forth in Title 24 of the California Code of Regulations.

(c) A facility described in subdivision (a) which retains the services of an architect or engineer for the anchorage of fixed medical equipment shall keep available for inspection by the department for a period of five years following the installation, a current written certification from the architect or engineer that the equipment is mounted in accordance with the applicable requirements.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1580

An act to amend Sections 4573, 4573.5, and 4573.6 of, and to add Sections 4573.8, 4573.9, and 5021 to, the Penal Code, relating to correctional institutions.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 5021 is added to the Penal Code, to read:

5021. (a) Any death that occurs in any facility operated by the Department of Corrections, the Department of the Youth Authority, the State Department of Mental Health, a city, county, or city and county, including county juvenile facilities, or any facility which is

under contract with any of these entities for the incarceration, rehabilitation, holding, or treatment of persons accused or convicted of crimes, shall be reported within a reasonable time, not to exceed two hours, of its discovery by authorities in the facility to the county sheriff, or his or her designated representative, and to the coroner's office, of the county in which the facility is located, as provided in Section 27491 of the Government Code. These deaths shall also be reported to the district attorney, or his or her designated representative, of the county in which the facility is located as soon as a representative of the district attorney's office is on duty. If the facility is located within the city limits of an incorporated city, the report shall also be made to the chief of police in that city, or to his or her designated representative, within a reasonable time, not to exceed two hours, of its discovery.

Any death of a person in a facility operated by the Department of Corrections or by the Department of the Youth Authority shall also be reported to the Chief of Medical Services in the Central Office of the Department of Corrections, or his or her designated representative, or to the Chief of Medical Services in the Central Office of the Department of the Youth Authority, or his or her designated representative, whichever applies, as soon as a representative of that office is on duty.

(b) The initial report of the death of a person required in subdivision (a) may be transmitted by telephone, direct contact, or by written notification, and shall outline all pertinent facts known at the time the report is made and all persons to contact, in addition to any other information the reporting person or officer deems pertinent.

(c) The initial report of the death of a person as required in subdivision (a) shall be supplemented by a written report, which shall be submitted to the entities listed in subdivision (a) within eight hours of the discovery of the death. This written report shall include all circumstances and details of the death that were known at the time the report was prepared, and shall include the names of all persons involved in the death, and all persons with knowledge of the circumstances surrounding the death.

SEC. 2. Section 4573 of the Penal Code is amended to read:

4573. Except when otherwise authorized by law, or when authorized by the person in charge of the prison or other institution referred to in this section or by an officer of the institution empowered by the person in charge of the institution to give the authorization, any person, who knowingly brings or sends into, or knowingly assists in bringing into, or sending into, any state prison, prison road camp, prison forestry camp, or other prison camp or prison farm or any other place where prisoners of the state are located under the custody of prison officials, officers or employees, or into any county, city and county, or city jail, road camp, farm or other place where prisoners or inmates are located under custody of any sheriff, chief of police, peace officer, probation officer or

employees, or within the grounds belonging to the institution, any controlled substance, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code, any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming a controlled substance, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

The prohibitions and sanctions addressed in this section shall be clearly and prominently posted outside of, and at the entrance to, the grounds of all detention facilities under the jurisdiction of, or operated by, the state or any city, county, or city and county.

SEC. 3. Section 4573.5 of the Penal Code is amended to read:

4573.5. Any person who knowingly brings into any state prison or other institution under the jurisdiction of the Department of Corrections, or into any prison camp, prison farm, or any other place where prisoners or inmates of these institutions are located under the custody of prison or institution officials, officers, or employees, or into any county, city and county, or city jail, road camp, farm or any other institution or place where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any institution or place, any alcoholic beverage, any drugs, other than controlled substances, in any manner, shape, form, dispenser, or container, or any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming any drug other than controlled substances, without having authority so to do by the rules of the Department of Corrections, the rules of the prison, institution, camp, farm, place, or jail, or by the specific authorization of the warden, superintendent, jailer, or other person in charge of the prison, jail, institution, camp, farm, or place, is guilty of a felony.

The prohibitions and sanctions addressed in this section shall be clearly and prominently posted outside of, and at the entrance to, the grounds of all detention facilities under the jurisdiction of, or operated by, the state or any city, county, or city and county.

SEC. 4. Section 4573.6 of the Penal Code is amended to read:

4573.6. Any person who knowingly has in his or her possession in any state prison, prison road camp, prison forestry camp, or other prison camp or prison farm or any place where prisoners of the state are located under the custody of prison officials, officers, or employees, or in any county, city and county, or city jail, road camp, farm, or any place or institution, where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any jail, road camp, farm, place or institution, any controlled substances, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code, any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming controlled substances, without being authorized to so possess the same by the

rules of the Department of Corrections, rules of the prison or jail, institution, camp, farm or place, or by the specific authorization of the warden, superintendent, jailer, or other person in charge of the prison, jail, institution, camp, farm or place, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

The prohibitions and sanctions addressed in this section shall be clearly and prominently posted outside of, and at the entrance to, the grounds of all detention facilities under the jurisdiction of, or operated by, the state or any city, county, or city and county.

SEC. 5. Section 4573.8 is added to the Penal Code, to read:

4573.8. Any person who knowingly has in his or her possession in any state prison, prison road camp, prison forestry camp, or other prison camp or prison farm or any place where prisoners of the state are located under the custody of prison officials, officers, or employees, or in any county, city and county, or city jail, road camp, farm, or any place or institution, where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any jail, road camp, farm, place, or institution, drugs in any manner, shape, form, dispenser, or container, any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming drugs, or alcoholic beverages, without being authorized to possess the same by rules of the Department of Corrections, rules of the prison or jail, institution, camp, farm, or place, or by the specific authorization of the warden, superintendent, jailer, or other person in charge of the prison, jail, institution, camp, farm, or place, is guilty of a felony.

The prohibitions and sanctions addressed in this section shall be clearly and prominently posted outside of, and at the entrance to, the grounds of all detention facilities under the jurisdiction of, or operated by, the state or any city, county, or city and county.

SEC. 6. Section 4573.9 is added to the Penal Code, to read:

4573.9. Notwithstanding any other provision of law, any person, other than a person held in custody, who sells, furnishes, administers, or gives away, or offers to sell, furnish, administer, or give away to any person held in custody in any state prison or other institution under the jurisdiction of the Department of Corrections, or in any prison camp, prison farm, or any other place where prisoners or inmates of these institutions are located under the custody of prison institution officials, officers, or employees, or in any county, city and county, or city jail, road camp, farm, or any other institution or place where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any institution or place, any controlled substance, the possession of which is prohibited by Division 10 (commencing with Section 11000) of the Health and Safety Code, if the recipient is not authorized to possess the same by the rules of the Department of Corrections, rules of the prison or jail,

institution, camp, farm, or place, or by the specific authorization of the warden, superintendent, jailer, or other person in charge of the prison, jail, institution, camp, farm, or place, is guilty of a felony punishable by imprisonment in the state prison for two, four, or six years.

The prohibitions and sanctions addressed in this section shall be clearly and prominently posted outside of, and at the entrance to, the grounds of all detention facilities under the jurisdiction of, or operatd by, the state or any city, county, or city and county.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1581

An act to add Sections 222.35, 222.36, 222.37, and 222.38 to, to repeal and add Title 5 (commencing with Section 275) of, and to add Title 6 (commencing with Section 276) to, Part 3 of Division 1 of the Civil Code, relating to child care.

[Approved by Governor September 29, 1990 Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 222.35 is added to the Civil Code, to read:

222.35. Whenever a child is being considered for adoption, the following order of placement preferences regarding racial background or ethnic identification shall be used, subject to the provisions of this section, in determining the adoptive setting in which the child should be placed:

(a) In the home of a relative.

(b) If a relative is not available, or if placement with available

relatives is not in the child's best interest, with an adoptive family with the same racial background or ethnic identification as the child. If the child has a mixed racial or ethnic background, placement shall be made with a family of the racial or ethnic group with which the child has the more significant contacts.

(c) If placement cannot be made under the rules set forth in this section within 90 days from the time the child is relinquished for adoption or has been declared free from parental custody or control, the child is free for adoption with a family of a different racial background or ethnic identification where there is evidence of sensitivity to the child's race, ethnicity, and culture. The child's religious background shall also be considered in determining an appropriate placement. A child may not be free for adoption with a family of a different racial background or ethnic identification pursuant to this subdivision however, unless it can be documented that a diligent search meeting the requirements of Section 222.37 for a family meeting the placement criteria has been accomplished.

SEC. 2. Section 222.36 is added to the Civil Code, to read:

222.36. A determination of good cause not to follow the rules set forth in Section 222.35 may be based on one or more of the following considerations:

(a) Request of the parent or parents.

(b) The extraordinary physical or emotional needs of the child.

(c) The child is legally free for adoption for a period exceeding 90 days during which a diligent search was conducted, and no family meeting the placement preference criteria is available for placement. Documentation shall be necessary in order to make a finding of good cause under this section.

(d) Application of these rules would not be in the best interests of the child.

SEC. 3. Section 222.37 is added to the Civil Code, to read:

222.37. Every public or private agency shall maintain records for the placement of each child to show that a diligent search has been conducted for families meeting the criteria of Section 222.35, and in accordance with diligent search rules which shall be adopted by the department. In conducting a diligent search, each agency shall use all appropriate resources, as necessary, in a directed effort to recruit a family meeting the placement preference criteria through (a) the use of all appropriate intra-agency and interagency, state, regional, and national exchanges and listing books, (b) child-specific recruitment in electronic and printed media coverage, and (c) the use of agency contacts with parent groups to advocate for specific waiting children.

Records of agencies maintained pursuant to this section may be reviewed upon request by the state department.

SEC. 4. Section 222.38 is added to the Civil Code, to read:

222.38. Sections 222.35 to 222.37, inclusive, shall be applicable only in determining the placement of a child who has been relinquished for adoption or has been declared free from the custody

and control of the parents.

SEC. 5. Title 5 (commencing with Section 275) of Part 3 of Division 1 of the Civil Code is repealed.

SEC. 6. Title 5 (commencing with Section 275) is added to Part 3 of Division 1 of the Civil Code, to read:

TITLE 5. PRIORITIES FOR FOSTER CARE PLACEMENT

275. With full consideration for the proximity of the natural parents to the placement so as to facilitate visitation and family reunification, whenever a child is being considered for placement in foster care, the following order of placement preference regarding racial or ethnic background shall be used, except where application of these priorities would not be in the best interests of the child:

(a) Placement shall, if possible, be made in the home of a relative. Diligent efforts shall be made to locate an appropriate relative. Before any child may be placed in long-term foster care, each relative whose name has been submitted to the agency as a possible caretaker, either by himself or herself or by other persons, shall be evaluated as an appropriate placement resource.

(b) If a relative is not available after 30 days from the time the child comes under the jurisdiction of the juvenile court, or if placement with available relatives is not in the child's best interest, placement shall be made with a foster parent with the same racial or ethnic identification as the child. If the child has a mixed racial or ethnic background, placement shall be made with a family of the racial or ethnic group with which the child has the more significant contacts.

(c) If placement cannot be made under the rules set forth herein, placement shall be made with a family of a different racial background or ethnic identification where there is evidence of sensitivity to the child's race, ethnicity, and culture. The child's religious background shall also be considered in determining an appropriate placement.

(d) Nothing in this section shall be construed as precluding either of the following:

(1) A search for an appropriate relative being conducted simultaneously with a search for a foster family.

(2) The child remaining at the same placement site while the search for an appropriate relative or foster family is being conducted.

275.1. A determination of good cause not to follow the rules set forth in Section 275 may be based on one or more of the following considerations:

(a) Request of the parent or parents.

(b) The extraordinary physical or emotional needs of the child.

(c) The unavailability of suitable parents for placement after a diligent search has been completed for families meeting the preference criteria.

275.2. Every public or private agency is encouraged to maintain

records for the placement of each child to show that a diligent search has been conducted for families meeting the criteria of this title, and in accordance with preference of placement criteria established by the State Department of Social Services.

Records of agencies maintained pursuant to this section may be reviewed upon request by the state department.

275.3. This title shall not apply in determining the foster care setting in which the child may be placed for a period not intended to exceed 30 days.

275.4. Any minor 10 years of age or older being considered for placement in a foster home shall have the right to make a brief statement to the court making a decision on placement. The court may disregard any preferences expressed by the minor. The minor's right to make a statement shall not be limited to the initial placement, but shall continue for any proceedings concerning continued placement or a decision to return to parental custody.

SEC. 7. Title 6 (commencing with Section 276) is added to Part 3 of Division 1 of the Civil Code, to read:

TITLE 6. PRIORITIES FOR ADOPTION

276. Whenever a child is being considered for adoption, the following order of placement preferences regarding racial background or ethnic identification shall be used, subject to the provisions of this title, in determining the adoptive setting in which the child should be placed:

(a) In the home of a relative.

(b) If a relative is not available, or if placement with available relatives is not in the child's best interest, with an adoptive family with the same racial background or ethnic identification as the child. If the child has a mixed racial or ethnic background, placement shall be made with a family of the racial or ethnic group with which the child has the more significant contacts.

(c) If placement cannot be made under the rules set forth in this section within 90 days from the time the child is relinquished for adoption or has been declared free from parental custody or control, the child is free for adoption with a family of a different racial background or ethnic identification where there is evidence of sensitivity to the child's race, ethnicity, and culture. The child's religious background shall also be considered in determining an appropriate placement. A child may not be free for adoption with a family of a different racial background or ethnic identification pursuant to this subdivision however, unless it can be documented that a diligent search meeting the requirements of Section 276.2 for a family meeting the placement criteria has been accomplished.

276.1. A determination of good cause not to follow the rules set forth in Section 276 may be based on one or more of the following considerations:

(a) Request of the parent or parents.

(b) The extraordinary physical or emotional needs of the child.

(c) The child is legally free for adoption for a period exceeding 90 days during which a diligent search was conducted, and no family meeting the placement preference criteria is available for placement. Documentation shall be necessary in order to make a finding of good cause under this subdivision.

(d) Application of these rules would not be in the best interests of the child.

276.2. Every public or private agency shall maintain records for the placement of each child to show that a diligent search has been conducted for families meeting the criteria of this title, and in accordance with diligent search rules which shall be adopted by the State Department of Social Services. In conducting a diligent search, each agency shall use all appropriate resources, as necessary, in a directed effort to recruit a family meeting the placement preference criteria through (a) the use of all appropriate intra-agency and interagency, state, regional, and national exchanges and listing books, (b) child-specific recruitment in electronic and printed media coverage, and (c) the use of agency contacts with parent groups to advocate for specific waiting children.

Records of agencies maintained pursuant to this section may be reviewed upon request by the state department.

276.3. This title shall be applicable only in determining the placement of a child who has been relinquished for adoption or has been declared free from the custody and control of the parents.

SEC. 8. Sections 1, 2, 3, and 4 of this bill incorporate changes made to the Civil Code proposed by both this bill and AB 3532. They shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, but this bill becomes operative first, (2) this bill adds Title 6 (commencing with Section 275) to Part 3 of Division 1 of the Civil Code and AB 3532 repeals and adds Chapter 2 (commencing with Section 220.10) to Title 2 of Part 3 of Division 1 of the Civil Code, and (3) this bill is enacted after AB 3532, in which case Section 7 of this bill shall remain operative only until the operative date of AB 3532 at which time it shall be repealed and Sections 1, 2, 3, and 4 of this bill shall become operative.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1582

An act relating to agriculture.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The continued viability of the California economy and quality of life are essential to the people of this state.

(b) The ability of the state to detect, exclude, and eradicate the Mediterranean fruit fly and the Mexican fruit fly is necessary to avoid increased pesticide use by farmers and homeowners.

(c) The development of improved lures, traps, trapping techniques, and alternative eradication procedures designed to keep the Mediterranean fruit fly and the Mexican fruit fly from becoming endemic to any portion of the state is essential to protect the agricultural industry, urban residents, and the economy.

(d) Future efforts to eradicate the Mediterranean fruit fly and Mexican fruit fly should utilize integrated pest management procedures, to the maximum extent feasible.

(e) The highest priority for research funding is for research leading to the development of effective detection devices or procedures, and for alternatives to aerial pesticide spraying.

(f) Fumigation at border stations will substantially assist in the control of these pests.

CHAPTER 1583

An act to add Section 1861.055 to the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 1861.055 is added to the Insurance Code, to read:

1861.055. (a) The commissioner shall adopt regulations governing hearings required by subdivision (c) of Section 1861.05 on or before 120 days after the enactment of this section. Those regulations shall, at the minimum, include timelines for scheduling and commencing hearings, and procedures to prevent delays in

commencing or continuing hearings without good cause.

(b) The sole remedy for failure by the commissioner to adopt the regulations required by subdivision (a) within the prescribed period or to abide by those regulations once adopted shall be a writ of mandate by any aggrieved party in a court of competent jurisdiction to compel the commissioner to adopt those regulations, or commence or resume hearings.

(c) Nothing in this section shall preclude the commissioner from commencing hearings required by subdivision (c) of Section 1861.05 prior to adopting the regulations required by this section.

(d) The administrative law judge shall render a decision within 30 days of the closing of the record in the proceeding.

SEC. 2. The Legislature finds and declares that this act furthers the purposes of Proposition 103 by providing for timely resolution of rate change applications.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to expedite formulation of regulations to conduct insurance rate hearings at the earliest possible time it is necessary that this act take effect immediately.

CHAPTER 1584

An act to add Section 222 to the Health and Safety Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 222 is added to the Health and Safety Code, to read:

222. (a) Notwithstanding Section 14669 of the Government Code, the Director of General Services, without obtaining competitive bids, may enter into a lease-purchase agreement, or a lease with option to purchase agreement, with an initial option purchase price which may exceed two million dollars ($2,000,000), to establish a laboratory and office facility in the City of Richmond, including the real property, fixtures, furnishings, equipment, and related improvements, for the use of the state department.

(b) Revenue bonds, negotiable notes, and negotiable bond anticipation notes may be issued by the State Public Works Board pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) of Division 3 of Title 2 of the

Government Code) to finance the acquisition, by exercise of an option to purchase or otherwise, equipping, and remodeling of laboratory and office facilities for the state department in the City of Richmond. The purchase price, plus the cost of equipment and remodeling, shall not exceed forty-three million dollars ($43,000,000). This amount shall be available as necessary for environmental studies, architectural programming, schematics, preliminary plans, working drawings, construction, remodeling, and equipment items. Any augmentation of the project cost shall be subject to Section 13332.11 of the Government Code.

(c) Revenue bonds, negotiable notes, and negotiable bond anticipation notes may be issued by the State Public Works Board pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) of Division 3 of Title 2 of the Government Code) to finance the renovating, restoration, repair, improvement, and equipping of laboratory and office facilities for the state department in the City of Berkeley. The cost of the work and equipment shall not exceed eleven million five hundred thousand dollars ($11,500,000). Any augmentation of the project cost shall be subject to Section 13332.11 of the Government Code.

(d) At least 30 days prior to the signing of the agreement for the acquisition of the Richmond facility pursuant to subdivision (b), the State Director of Health Services and the Director of General Services shall jointly report to the Joint Legislative Budget Committee and the fiscal committees of each house of the Legislature. The report shall specify (1) the terms of the proposed agreement, (2) how the acquisition and the renovation pursuant to subdivision (c) will meet the needs of the State Department of Health Services for laboratory facilities in the East Bay area, and (3) implementation plans for the acquisition and renovation of the Richmond facility and renovation of the 2151 Berkeley Way facility, including project planning guides and cost estimates for both projects. At least 30 days prior to the start of working drawings for the Richmond remodeling project and Berkeley renovation project, the Director of General Services shall submit preliminary plans, specifications, and cost estimates to the chair of the Joint Legislative Budget Committee and the chairs of the fiscal committees of each house of the Legislature.

(e) Notwithstanding Section 13340 of the Government Code, funds made available from any source for acquiring, planning, equipping, and remodeling of the laboratory and office facilities in the City of Richmond and the laboratory and office facilities in the City of Berkeley are hereby continuously appropriated to the State Public Works Board.

(f) The Treasurer is authorized to use or direct the use of the proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law in order to maintain the tax-exempt status of those

bonds and to obtain any other advantage under law on behalf of the funds of this state.

(g) Amounts necessary to pay rent for the facilities and equipment financed pursuant to this section and under and pursuant to the facility and equipment leases are hereby appropriated to the Director of General Services, without regard to fiscal year, from the General Fund, but shall become available for expenditure only if the Department of Finance certifies to the Controller that the amount required to pay this rent has not been included in the Budget Act for that fiscal year.

SEC. 2. On or before March 1, 1991, the State Department of Health Services shall submit to the Governor and the Chairpersons of the Senate Committee on Health and Human Services, the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Health, and the Assembly Committee on Ways and Means, a programmatic and facilities needs plan to provide for the estimated workload requirements of the statewide public health programs over a five-year period. This plan shall include, but not be limited to, all of the following elements:

(a) A description of all existing programs, including the mission or goals of each program, the legislative mandates governing program activities, the clients for program products, relationships with universities or other research institutions, the use made by a program of facilities at research institutions, and the role which consultation and communications with persons in other agencies or institutions plays in achieving program goals.

(b) The current and estimated future staffing levels of each existing program.

(c) Existing locations, both principal and secondary, for each program, the number and types of program staff housed at each location, and the program functions the staff performs.

(d) The desirability and feasibility of developing shared space with the University of California's School of Public Health at the Berkeley Way site.

(e) An identification of programs where consolidation is desirable, based upon the potential for improved coordination or communication within and among program elements, access to research institutions, and the potential for improving services to program clients.

(f) For the programs identified in subdivision (e), an evaluation of all of the following:

(1) The number of positions which would be transferred, and the functions they serve in the program.

(2) The cost of transferring employees and equipment, and how these costs would be paid.

(3) The impacts on the program that may occur as a result of the transfer, including an estimate, and the basis of that estimate, of the number of staff who would leave the program, rather than being transferred; the length and impact of any program delays resulting

from a loss of employees; and the impact of losing proximity to nearby universities and research institutions that support or are involved with the department's programs.

(4) The benefits the department expects to achieve as a result of the transfer.

(5) A description and evaluation of other alternatives that were considered prior to reaching a decision regarding the desirability of transferring positions from one location to another and the reasons for selecting one alternative over another.

(g) On or before May 15, 1991, the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Ways and Means shall each hold at least one hearing on the department's programmatic and facilities needs plan.

SEC. 3. The State Department of Health Services shall form an employee advisory committee to assist in the preparation of the plan described in Section 2. This committee shall consist of department employees representing clerical, professional, and managerial classes employed at each of the locations where the public health programs of the department maintain a headquarters or major regional facility. The committee shall include union representatives from each of the employee classes described above, in addition to employees from each of these classes who are not participating on the committee as union representatives. Committee members representing employee unions shall be appointed by their respective unions. The department shall obtain input and recommendations from the committee in preparing the plan, and include the committee's input and recommendations in the final plan. The committee shall respond to the department's request for input and recommendations no later than 60 days from the date of such a request. The department may note those areas where the department's management disagrees with the input or recommendations provided by the committee. The final plan shall include comments from the committee regarding the report's findings and recommendations. These comments may reflect both minority and majority opinions of the committee. The employee advisory committee shall terminate on July 1, 1991.

SEC. 4. When the State Department of Health Services has completed the renovation of the property owned by the State of California located at 2151 Berkeley Way, the property owned by the State of California located on the southwest corner of University Avenue and Acton Street, Berkeley, shall be disposed of as surplus state property under the customary procedures established by the Department of General Services, unless the plan described in Section 2 indicates that the property is needed by the department to implement the programmatic and facilities needs plan.

SEC. 5. Nothing in Section 2 of this act shall be construed to require a delay in the implementation of any action pursuant to Section 222 of the Health and Safety Code, as added by Section 1.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to expedite relocation of the laboratory facilities of the State Department of Health Services, which are presently inadequate, and to prevent the State Department of Health Services from failing to fulfill its program responsibilities, it is necessary that this act go into immediate effect.

CHAPTER 1585

An act to amend Sections 70045.8, 70046.1, 70054.4, 70059.7, 70141.9, 73110, 73113, 73394, 73601, 73602, 73644, 73646, 73672.6, 73674, 73674.1, 73676, 73681.1, 73682, 73683, 73684, 73686, 73687, 73691, 73692, 73772, 73773, 73794, 73954, 73959, 74023, 74030, 74133, 74134, 74135.1, 74136, 74138, 74141, 74143, 74344, 74345, 74352, 74368, 74370, 74604, 74607, 74610, 74642, 74643, 74644, 74645, 74647, 74663, 74665, 74745, 74783, 74784, 74842, 74843, 74846, 74851, 74949.1, 74956, 74963, 74965, 74969, 74970, and 74971 of, to add Sections 69908, 70045.12, 73672.8, 73674.5, 73681.2, 74136.1, 74792, 74841.5, 74843.5, and 74845.2 to, and to repeal Sections 74135, 74137, 74966, and 74968 of, the Government Code, relating to courts.

[Approved by Governor September 29, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 69908 is added to the Government Code, to read:

69908. Notwithstanding any other provision of law, in Madera County, a majority of the judges of the superior court may appoint such officers or employees as are expressly authorized by law and, with the approval of the board of supervisors, may establish such additional titles and may appoint such additional commissioners, officers, assistants, and other employees as they deem necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. At the request of the judges or the superior court executive officer, the county personnel department shall assist in the recruitment and examination of court personnel. Personnel hired or appointed as official reporters, official interpreters, research attorneys, or in other nonclerical positions shall serve at and may be terminated at the pleasure of a majority of the judges. Other provisions of county civil service or personnel rules or procedures shall not be applicable to those court employees unless made applicable by local court rule. Except as otherwise expressly provided by statute, salaries of all court personnel shall be fixed and adjusted by mutual agreement of a majority of the judges and the board of supervisors. Benefits other than salary shall, for all court

personnel, be the same as are now or may hereafter be provided to equivalent county classifications, as that equivalency is determined by agreement of the majority of judges and the board of supervisors, but shall not exceed those provided for the equivalent county classifications. To the extent necessary, and for the sole purpose of implementing the intent of this section, court employees shall be deemed county employees for inclusion in those benefit programs provided county employees as a group or groups. All court employees except pro tempore court reporters shall, if otherwise eligible under statutory and retirement system membership requirements, be included in the county's retirement system.

SEC. 2. Section 70045.8 of the Government Code is amended to read:

70045.8. (a) Notwithstanding any other provision of law, including, but not limited to, Sections 70040, 70041, 70042, and 70045, the following provisions shall be applicable to the official court reporters in Butte County Superior Court:

(1) The regular full-time official court reporters under the direction of the presiding judge of the superior court shall perform the following duties:

(A) Report all criminal proceedings.

(B) Report all civil commitment proceedings and all contempt proceedings.

(C) Report all juvenile proceedings other than those heard by juvenile court referee or traffic hearing officer.

(D) Report all civil jury trials.

(E) Report all hearings on petitions for extraordinary relief, including, but not limited to, proceedings for injunctions, mandate, prohibition, certiorari, review, habeas corpus, and coram nobis.

(F) Report all proceedings of the grand jury when requested by the foreman, or by the district attorney or by the county counsel.

(G) Report any other court proceedings when a party requests a court reporter in accordance with rules of court.

(H) Report coroner's inquests when requested by the coroner.

(I) Report proceedings for the Butte County Board of Equalization when requested by the board.

(J) When not occupied with the above duties, and upon request of a presiding judge of the municipal court and approval of the presiding judge of the superior court, he or she shall report matters listed under paragraph (1) of subdivision (b).

(b) Notwithstanding any other provision of law, including, but not limited to, Sections 70040, 70041, 70042, and 70045, the following provisions shall be applicable to the official court reporters in the Butte County Municipal Courts:

(1) The regular full-time official municipal court reporters under the direction of the presiding judges of the municipal courts shall perform the following duties:

(A) Report the preliminary examination of those accused of crimes before magistrates within Butte County.

(B) Report all felony pleas.

(C) Report any other court proceeding as required by law.

(D) When not occupied with the above duties, and upon request of the presiding judge of the superior court and approval of a presiding judge of the municipal court, he or she shall report matters listed under paragraph (1) of subdivision (a) above.

(c) The board of supervisors shall, by ordinance, specify the salary rates for official court reporters in Butte County.

In addition to the aforementioned compensation, each official court reporter shall receive twenty-five dollars ($25) per month as reimbursement for the cost of necessary supplies.

The foregoing salary established pursuant to county ordinance is for compensation for reporting services in the superior and municipal courts under subdivisions (a) and (b) of this section. For all transcriptions incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of this chapter.

The regular full-time official court reporters shall be entitled to the same privileges with respect to retirement, vacation, sick leave, and group insurance, which either now or hereafter may be provided by ordinance to other employees of the county.

(d) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to subdivisions (a) and (b), the judge or judges of the superior and municipal courts may appoint as many additional official court reporters, who shall be known as official reporters pro tempore, as the business of the courts may require in order that the judicial business of the courts in the county may be carried on without delay. They shall be paid in accordance with the per diem, transcription, and other fee provisions of Article 9 (commencing with Section 69941) of this chapter. The per diem, traveling and other expenses, and the fees chargeable to the county under the terms of these provisions shall be a proper county charge.

SEC. 3. Section 70045.12 is added to the Government Code, to read:

70045.12. Notwithstanding any other provision of law, the following provisions shall be applicable to the official court reporters in the superior court and municipal courts of Madera County:

(a) In Madera County, official court reporters shall be appointed by the judges of the superior court pursuant to Section 70043 and shall serve at the pleasure of the judges. Official reporters shall perform the duties required of them by law. In addition, they shall render assistance to the judge or judges of the superior court as the judge or judges may direct.

(b) In Madera County, official court reporters shall be appointed by the judges of the municipal court pursuant to Section 72194 and shall serve at the pleasure of the judges. Official reporters shall perform the duties required of them by law. In addition, they shall render assistance to the judge or judges of the municipal court as the

judge or judges may direct.

(c) Notwithstanding any other provision of law, the salary and benefits for official court reporters in Madera County shall be determined pursuant to Section 69908.

(d) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to this statute, the judge or judges of the superior court and the municipal court may appoint as many additional official court reporters, who shall be known as official reporters pro tempore, as the business of the courts may require in order that the judicial business of the courts in the county may be carried on without delay. They shall be paid in accordance with the per diem, transcription, and other fee provisions of Article 9 (commencing with Section 69941) of this chapter. The per diem, traveling, and other expenses, and the fees chargeable to the county under the terms of these provisions are a proper county charge.

(e) Official court reporters shall devote full time to the performance of the duties required of them by law and may not engage or solicit to engage in any other employment in their professional capacity during the normal workday.

SEC. 4. Section 70046.1 of the Government Code is amended to read:

70046.1. In Santa Clara County, the board of supervisors shall fix the salary of regular official reporters, which shall not be less than a biweekly salary of one thousand six hundred and ninety-one dollars and forty-four cents ($1,691.44), and the compensation of official reporters pro tempore, which shall be at a rate not less than ninety-three dollars and three cents ($93.03) per half day and one hundred and eighty-six dollars and six cents ($186.06) per day.

During the hours that the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

SEC. 5. Section 70054.4 of the Government Code is amended to read:

70054.4. (a) In the Butte County Superior Court, a reporter's filing fee of eighteen dollars ($18) shall be paid in actions and proceedings as specified in Section 68090.5.

(b) In addition to any fee otherwise required, in civil cases that last longer than one judicial day, a fee per day equal to one-half of the full per diem rate for official reporters pro tempore shall be charged per one-half day of services to the parties for the services of an official reporter for the second and each succeeding day a reporter is required.

(c) In addition to any fee otherwise required, in a civil case in which the court orders a daily transcript, necessitating the services of two phonographic reporters, the party requesting the daily transcript shall pay a fee per day equal to the per diem rate for

official reporters pro tempore for the services of the second reporter for the first and each succeeding day.

(d) All parties shall deposit a pro rata share of such fees with the clerk at the beginning of the second and each succeeding day's court session.

(e) All fees paid pursuant to this subdivision shall be taxed as costs.

(f) For the purposes of this subdivision, "one-half day" means any period of judicial time during either the morning or the afternoon court session.

SEC. 6. Section 70059.7 of the Government Code is amended to read:

70059.7. In Santa Barbara County each regular official reporter shall be paid a biweekly salary which shall be one thousand six hundred eight dollars and sixty-four cents ($1,608.64) which salary shall include payment for services in reporting all proceedings in the superior or municipal court, before the grand jury, and before coroners' inquests.

Reporters pro tempore shall be paid at a per diem rate of up to a maximum of one hundred sixty dollars ($160) or eighty dollars ($80) for each half day or four (4) hour period or portion thereof for the days they are actually on duty under order of the court, and shall receive from the county their necessary traveling and other expenses when necessarily called from other counties. Rates of compensation of regular official reporters and official reporters pro tempore may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court. However, any changes in compensation which are made pursuant to this section shall be on an interim basis and shall remain in effect only until January 1, 1992, unless ratified by statute by the Legislature prior to that date.

In such a county, the fee required by Section 70053 shall be ten dollars ($10).

In addition to any fee otherwise required, in all contested civil trials wherein the services of a court reporter have been requested by any party to the action, a per diem fee shall be charged to the party requesting such service, or, at the discretion of the court, to the parties on a pro rata basis, for each day of court reporting service or portion thereof, equal to the per diem rate established for pro tempore reporters of the court. If the court assesses the reporter's fee on a pro rata basis, the reporter and fee attached thereto may be waived upon the timely stipulation of all parties. Fees in long-cause civil trials shall be posted with the clerk's office no later than 14 days prior to the date set for master calendar. Fees in short-cause civil trials of one day or less, shall be posted with the clerk's office no later than seven days prior to the date set for the short-cause calendar.

SEC. 6.5. Section 70141.9 of the Government Code is amended to read:

70141.9. In a county of the 11th class, the superior court, subject to prior approval by the board of supervisors, may appoint four commissioners. However, at such time as the board of supervisors

finds that there are sufficient funds for a fifth commissioner and adopts a resolution to that effect, there shall be five commissioners for the superior court. The fifth commissioner position shall not be counted in the calculation of trial court funding pursuant to Section 77202, and the salary for this position shall not be considered as a part of court operations for Riverside County for purposes of Section 77003 and 77004. The superior court may provide that the commissioners, in addition to the duties prescribed in Section 259 of the Code of Civil Procedure, shall perform the duties prescribed by Section 259a of the Code of Civil Procedure and in addition thereto the duties of a probate commissioner appointed pursuant to Section 69897. The superior court may also authorize the commissioners to perform the duties of a juvenile court referee appointed pursuant to Section 247 of the Welfare and Institutions Code. Any commissioner authorized to perform the duties set forth above shall receive a salary equal to 75, 80, or 85 percent of the salary of a judge of the superior court. The court shall determine the level of the salary to be received by a court commissioner, making adjustments on the three levels in accordance with the qualifications, performance, and other factors deemed relevant by the court. The salary shall be adjusted by the court at the time and in the manner specified in Section 68203. Each commissioner shall also be allowed actual traveling expenses pursuant to Section 70148.

The amendment of this section made at the 1985-86 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

SEC. 7. Section 73110 of the Government Code is amended to read:

73110. There shall be one marshal of the San Bernardino County Municipal Court District who shall be appointed by, and serve at the pleasure of, a majority of the judges and who shall receive an annual salary of sixty-eight thousand nine hundred and five dollars ($68,905) commencing December 30, 1989, with a 4.5 percent increase commencing June 30, 1990. The marshal shall be the appointing power for those positions listed in Section 73113 as being appointed by the marshal.

SEC. 8. Section 73113 of the Government Code is amended to read:

73113. The number of positions within each job classification which may be filled by appointment by the municipal court administrator and the marshal and the salary range prescribed in Section 73113.5 which constitutes the compensation for each job classification are as follows:

Appointed by the Municipal Court Administrator

Job classification	Number	Salary Range Effective 7/1/89	6/30/90
Assistant Municipal Court Administrator	1	C72	D72
Municipal Court Division Manager II	3	C59	D59
Municipal Court Division Manager I	5	C55	D55
Municipal Court Division Supervisor II	3	C51	D51
Municipal Court Division Supervisor I	5	C44	D44
Municipal Court Chief Clerk	5	C44	D44
Courtroom Clerk II	40	C41	D41
Clerk IV	10	C34	D34
Fiscal Clerk II	8	C31	D31
Fiscal Clerk III	2	C36	D36
Clerk III	93	C30	D30
Clerk II	1	C23	D23
Legal Procedures Clerk I	42	C32	D32
Legal Procedures Clerk II	3	C38	D38
Secretary I	1	C35	D35
Secretary II	3	C38	D38
Accountant I	1	C48	D48
Legal Procedures Clerk III	1	C44	D44
Automated Systems Analyst II	1	C60	D60
Supervisor of Administrative Services I	1	C54	D54
Staff Analyst I	1	C48	D48
Executive Secretary III	1	C38	D38

Appointed by Marshal

Job classification	Number	Salary Range Effective 7/1/89	6/30/90
Marshal's Captain	3		G29
Marshal's Lieutenant	7		G28
Marshal's Sergeant	7		G25
Deputy Marshal	62		E19
Administrative Clerk II	1	C43	D43
Marshal's Clerk II	13	C31	D31
Marshal's Clerk I	14	C26	D26
Marshal's Technician	20	C32	D32
Marshal's Radio Dispatch Clerk	5	C28	D28
Executive Secretary II	1	C38	D38
Staff Analyst II	1	C54	D54

The marshal shall also appoint as many deputy marshal keepers as may be required by law. The deputy marshal keepers shall be compensated at the fee allowed by law for keeping property.

In hiring for vacancies in the position of deputy marshal, the marshal may appoint successful candidates as deputy marshal probationary at a flat hourly rate. The flat hourly rate shall be in the sum of thirteen dollars and eighty cents ($13.80) commencing December 30, 1989, and shall be payable until successful completion of a probationary period of one year, except that the marshal may extend the probationary period for not to exceed six months, after which the deputy marshal probationary shall be advanced to the deputy marshal classification at the "A" step of the appropriate salary range.

SEC. 8.5. Section 73394 of the Government Code is amended to read:

73394. (a) The clerk-administrator, with the concurrence of the presiding judge, may appoint:

(1) One account clerk III who shall receive a salary specified in Range 41.0.

(2) Two deputy municipal court clerks III who shall each receive a salary specified in Range 44.5.

(3) Three courtroom deputy municipal court clerks who shall each receive a salary specified in Range 42.0.

(4) Six deputy municipal court clerks I/II who shall each receive a salary specified in Range 34.5, or Range 39.5 if promoted to the II level.

(5) The clerk-administrator shall receive a salary specified in Range 76.5.

(b) The clerk-administrator, with the concurrence of the presiding judge and approval of the board of supervisors, may appoint such additional employees as may be necessary, each appointment to remain in effect only until January 1 of the second

year following the year in which the appointment was made, unless subsequently ratified by the Legislature.

SEC. 8.7. Section 73601 of the Government Code is amended to read:

73601. (a) There is one court administrator for the superior court and the municipal court, who shall be appointed by the board of supervisors with the concurrence of a majority of the judges of the county, and who shall hold office at their pleasure. The court administrator shall receive a monthly salary in the range of three thousand six hundred thirty-eight dollars and twenty-seven cents ($3,638.27)—four thousand ninety-seven dollars and sixty cents ($4,097.60).

(b) Notwithstanding subdivision (a) or any other provision of law, the board of supervisors may appoint or remove any other county officer as court administrator pursuant to the terms and conditions of an agreement approved by a majority of the judges of El Dorado County. The court administrator appointed pursuant to this subdivision shall receive a monthly salary in the range of four thousand one hundred forty-nine dollars ($4,149)—five thousand forty-five dollars ($5,045).

SEC. 8.9. Section 73602 of the Government Code is amended to read:

73602. The court administrator may, in accordance with the El Dorado County Personnel Rules, appoint the following employees, each of whom shall receive a monthly salary in the range specified:

Position	Salary Range
(a) Three supervising municipal court clerks	$1,563.00–$1,844.27
(b) Three municipal court clerk III's	$1,456.00–$1,717.73

SEC. 9. Section 73644 of the Government Code is amended to read:

73644. The court administrator may appoint the following personnel:

(a) One assistant court administrator. The assistant court administrator shall serve as the assistant clerk of the court and shall receive a biweekly salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) One deputy clerk-administrative assistant I, II, III or deputy clerk-administrative services manager I or II as the case may be. A

deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego. A deputy clerk-administrative services manager I shall receive a biweekly salary at a rate equal to that specified for administrative services manager I in the classified service of the County of San Diego. A deputy clerk-administrative services manager II shall receive a biweekly salary at a rate equal to that specified for administrative services Manager II in the classified service of the County of San Diego.

(c) Two deputy clerk-division managers III each of whom shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II of the San Diego Judicial District.

(d) Five deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V of the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(e) Sixteen deputy clerks IV. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III.

(f) Sixty-three deputy clerks III, II, I or deputy clerk-intermediate clerk typists as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to deputy clerk I may be at any step within the salary range. Up to four of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego.

(g) Four deputy clerk-data entry operators, each of whom shall receive a biweekly salary at a rate equal to that specified for data

entry operator in the classified service of the County of San Diego.

(h) One deputy clerk-municipal court secretary who shall receive a biweekly salary at a rate equal to that specified for criminal legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range. Notwithstanding subdivision (b) of Section 74749, persons who hold the position of deputy clerk-administrative secretary IV on January 1, 1991, may be appointed by the court administrator to the position of deputy clerk-municipal court secretary without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(i) Three deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(j) One deputy clerk-research attorney I, deputy clerk-research attorney II, or deputy clerk-law clerk, as the case may be. A deputy clerk-research attorney I shall receive a biweekly salary equal to that specified for a deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary equal to that specified for a deputy county counsel II in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for a law clerk in the classified service of the County of San Diego.

(k) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for an administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for an administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for an administrative secretary I in the classified service of the County of San Diego.

(*l*) One deputy clerk-assistant, associate, or senior accountant as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for the class of assistant accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for the class of associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for the class of senior accountant in the classified service of the County of San Diego.

(m) One deputy clerk-substance abuse assessor I and one deputy clerk-substance abuse assessor II. Notwithstanding subdivision (b) of

Section 73649, persons appointed to these positions on or after January 1, 1990, shall serve at the pleasure of the court administrator. The deputy clerk-substance abuse assessor II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of San Diego County. The deputy clerk-substance abuse assessor I shall receive a biweekly salary at a rate 9 percent below that specified for a deputy clerk-substance abuse assessor II. Appointments to deputy clerk-substance abuse assessor I and II may be at any step within the salary range.

(n) Notwithstanding subdivision (b) of Section 73649, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(o) Notwithstanding subdivision (b) of Section 73649, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73640 to 73650, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator.

The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(p) Notwithstanding subdivision (b) of Section 73649, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(q) Three deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(r) One deputy clerk-municipal court computer specialist I, II, or III, as the case may be. A deputy clerk-municipal court computer specialist I, II, or III shall receive a biweekly salary at a rate equal to that specified for departmental computer specialist I, II, or III, respectively, in the classified service of the County of San Diego.

(s) One deputy clerk-staff development specialist or deputy clerk-staff development coordinator as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(t) Seven deputy clerks V, each of whom shall receive a biweekly salary equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall

include supervisory responsibilities. Notwithstanding subdivision (b) of Section 74749, persons who hold the position of senior deputy clerk IV on January 1, 1991, may be appointed by the court administrator to the position of deputy clerk V without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(u) Except as provided in this section, Section 74345 shall apply to the attachés appointed pursuant to this section and Section 73643.

(v) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (m), inclusive, (o), (p), (q), (r), (s), and (t) of this section and under Section 73646 may be increased by up to 30 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

SEC. 10. Section 73646 of the Government Code is amended to read:

73646. By order entered in the minutes of the court, a majority of judges may appoint three judicial secretaries who shall serve at the pleasure of the judges. Each judicial secretary shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego commencing at step 4 at initial employment and advancing to step 5 at the end of one year of continuous service.

The position of judicial secretary shall be deemed comparable to the position of administrative secretary IV in the classified service of San Diego County. Whenever the salary of the class of administrative secretary IV is adjusted by the Board of Supervisors of San Diego County, the salary of the class of judicial secretaries shall be adjusted a commensurate percentage in the salary schedule on the same date.

Notwithstanding Section 73649, the judicial secretaries shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for administrative secretary IV in the classified service of the County of San Diego. However, the class of judicial secretary shall be entitled to: (a) earn sick leave credit at the rate of 5.385 percent of each hour of paid service during the pay period; (b) earn vacation credit at the rate of 5.769 percent of each hour of paid

service during the pay period and accumulate vacation credit not to exceed 25 working days where the employee has less than 10 years of continuous service; and (c) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 35 working days where the employee has 10 years or more of continuous service.

SEC. 11. Section 73672.6 of the Government Code is amended to read:

73672.6. There is one traffic trial commissioner, who shall be appointed pursuant to Article 10 (commencing with Section 72450) of Chapter 9 of this title. However, operative July 1, 1992, there shall be two such traffic trial commissioners and no traffic referee, so long as Solano County continues to receive block grant funding pursuant to the Brown-Presley Trial Court Fund Act.

Any traffic trial commissioner appointed pursuant to Article 10 (commencing with Section 72450) of Chapter 9 of this title to serve a municipal court district in the County of Solano shall receive a salary equal to 75 percent of the salary of a judge of a municipal court.

The traffic trial commissioner position shall not be counted in the calculation of trial court funding pursuant to Section 77202, and the salary for this position shall not be considered as a part of court operations for Solano County for purposes of Sections 77003 and 77204.

SEC. 12. Section 73672.8 is added to the Government Code, to read:

73672.8. A traffic referee in the northern Solano Judicial District shall receive annual compensation, as follows:

(a) Equal to 50 percent of the salary of a judge of the municipal court during the first year of service.

(b) Equal to 60 percent of the salary of a judge of the municipal court during the second year of service.

(c) Equal to 65 percent of the salary of a judge of the municipal court during the third year of service.

(d) Equal to 70 percent of the salary of a judge of the municipal court during the fourth year of service.

(e) Equal to 75 percent of the salary of a judge of the municipal court after the fourth year of service.

SEC. 13. Section 73674 of the Government Code is amended to read:

73674. The municipal court executive officer may appoint the following numbers of staff at the classifications and salary grades indicated:

Number		Classification	Salary Grade
(a)	1	Assistant Municipal Court Executive Officer	70-00400
(b)	1	Clerical Operations Manager	75-00800
(c)	1	Administrative Assistant	09-03800
(d)	2	Data Entry Clerk	09-01000
(e)	4	Supervising Legal Procedures Clerk	08-01200
(f)	1	Fiscal Records Supervisor	08-01900
(g)	5	Courtroom Clerk	09-03400
(h)	3	Lead Legal Procedures Clerk	09-02800
(i)	1	Lead Fiscal Clerk	09-03300
(j)	3	Fiscal Clerk	09-02400
(k)	23	Legal Procedures Clerk	09-01800
(*l*)	1	Principal Court Clerk	08-01600
(m)	5	Court Reporter	09-04100

SEC. 14. Section 73674.1 of the Government Code is amended to read:

73674.1. (a) Regular official court reporters shall report all criminal and civil proceedings in their respective courts. When not engaged in the performance of other duties imposed upon them by law, each reporter shall render such assistance as may be required in any other court of the county to which the reporter may be assigned, and perform such other verbatim reporting services as may be required such as, but not limited to, board of equalization hearings, public hearings, and depositions. During hours in which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of regular duties and shall not engage in any other employment in their professional capacity.

(b) Each regular official court reporter shall receive a salary at the rate specified in salary grade 09-04100.

(c) For all transcripts incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of Chapter 5 of this title. The initial hiring rate for each position shall be step 1, provided that the judges may appoint any such reporter at a higher initial step if, in the opinion of the majority of judges, an individual to be appointed has such experience and qualifications as to entitle the appointee to such higher initial step.

(d) A regular official court reporter shall serve at the pleasure of the appointing judge, but shall be entitled to the same benefits and privileges respecting longevity, service credits, cost-of-living or other general pay increases, retirement, vacation, sick leave, and group insurance which are provided other employees of the county.

Court reporters shall be entitled to any increases provided other employees of the county respecting longevity, service credits, cost-of-living or general pay increases, retirement, vacation, sick leave, and group insurance, but such increases shall be on an interim basis and remain in effect only until January 1, 1993, unless ratified by statute by the Legislature prior to that date.

(e) Judges of the court may appoint as many official reporters pro tempore as the business of the court requires. They shall be unsalaried but shall receive the fees provided in Article 9 (commencing with Section 69941) of Chapter 5 of this title, which fees, upon order of the court, shall be a proper charge against the general fund of the county.

(f) (1) A reporter's filing fee of sixteen dollars ($16) shall be paid in actions and proceedings as specified in Section 68090.5.

(2) In addition to any fee otherwise required in civil cases that last longer than five judicial days, a fee per day equal to the per diem rate for official reporters pro tempore shall be charged to the parties for the services of an official reporter for the sixth and each successive day a reporter is required.

(3) In addition to any fee otherwise required in a civil case in which the court orders a daily transcript necessitating the services of two phonographic reporters, the party requesting the daily transcript shall pay a fee per day equal to the per diem rate for official reporters pro tempore for the services of the second reporter for the first and each successive day.

SEC. 15. Section 73674.5 is added to the Government Code, to read:

73674.5. So long as Solano County continues to receive block grant funding pursuant to the Brown-Presley Trial Court Funding Act, the municipal court executive officer may appoint the following numbers of staff at the classification and salary grades indicated:

	Number	Classification	Salary Grade
(a)	1	Data Entry Clerk (LT-P)	09-01000
(b)	2	Courtroom Clerk	09-03400
(c)	1	Fiscal Clerk	09-02400
(d)	4	Legal Procedures Clerk	09-01800
(e)	1	Interpretive Services Co-ordinator	07-03700
(f)	1	Systems Analyst	30-01900
(g)	2	Clerk	09-00600

SEC. 16. Section 73676 of the Government Code is amended to read:

73676. Wherever a reference to a salary grade number is made in this article, the schedules found in the Memoranda of Understanding adopted by the Board of Supervisors of Solano County effective January 1, 1991, shall apply. Any salary grade resulting from an amendment of such schedule and listing shall

remain effective only until January 1 of the second year following the calendar year in which such change is made.

SEC. 17. Section 73681.1 of the Government Code is amended to read:

73681.1. The judges of the Consolidated Fresno Judicial District may appoint one court commissioner who shall possess the same qualifications as the law requires of a judge of a municipal court. He or she shall hold office at the pleasure of the judges and shall receive a salary of 75 percent of the salary of a judge of the municipal court.

SEC. 18. Section 73681.2 is added to the Government Code, to read:

73681.2. The judges of the Consolidated Fresno Judicial District may appoint one traffic trial commissioner who shall possess the same qualifications as the law requires of a judge of a municipal court. He or she shall hold office at the pleasure of the judges and shall receive a salary of 75 percent of the salary of a judge of the municipal court.

SEC. 19. Section 73682 of the Government Code is amended to read:

73682. There shall be one municipal court administrator to be appointed by the judges of the court who shall be the clerk, administrator, and secretary of the court, and the provisions of Section 71183 shall not apply. He or she shall hold office at the pleasure of the judges and shall receive a salary within Band "D" of the Fresno County Salary Resolution, effective January 8, 1990.

SEC. 20. Section 73683 of the Government Code is amended to read:

73683. (a) The clerk may appoint the following court personnel who shall receive a salary at the range indicated in the Fresno County Salary Resolution:

(1) One Administrative Services Assistant at salary within Band "H."

(2) One Administrative Secretary-Conf. at salary range 870.

(3) One Supervising Court Clerk at salary range 980.

(4) Two Senior Court Clerks at salary range 906.

(5) Seventeen Court Clerks II at salary range 846.

(6) Seventeen Court Clerks I at salary range 769.

(7) Five Supervising Legal Process Clerks at salary range 980.

(8) Six Senior Legal Process Clerks at salary range 906.

(9) Ten Legal Process Clerks II at salary range 846.

(10) Ten Legal Process Clerks I at salary range 769.

(11) Forty-one Office Assistants III at salary range 585.

(12) Forty-one Office Assistants II at salary range 527.

(13) Forty-one Office Assistants I at salary range 441.

(14) One Municipal Court Interpreting Services Coordinator at salary range 846.

(15) One Municipal Court Interpreter at salary range 769.

(16) One Secretary to the Municipal Courts III at salary range 753.

(17) One Secretary to the Municipal Court II at salary range 648.

(18) One Secretary to the Municipal Courts I at salary range 588.

(19) One Assistant Municipal Court Administrator at salary within Band "F."

(20) Three Municipal Court Division Managers at salary within Band "G."

(21) One Research Attorney III at salary range 1484.

(22) One Research Attorney II at salary range 1375.

(23) One Research Attorney I at salary range 1075.

(b) Salary ranges indicated in paragraphs (1) through (23) of subdivision (a) are effective December 25, 1989.

(c) The clerk may appoint any combination of court clerks, legal process clerks, and office assistants described in paragraphs (3) through (13) of subdivision (a) not to exceed a total of 77; may appoint any combination of secretaries described in paragraphs (16) through (18) of subdivision (a) not to exceed a total of one and may appoint any combination of research attorneys described in paragraphs (21) through (23) of subdivision (a) not to exceed a total of one.

(d) The clerk may appoint the following court personnel in the Clovis Branch who shall receive a salary at the range indicated in the Fresno County Salary Resolution:

(1) One Court Clerk II at salary range 846.

(2) One Court Clerk I at salary range 769.

(3) One Supervising Legal Process Clerk at salary range 980.

(4) Five Legal Process Clerks II at salary range 846.

(5) Five Legal Process Clerks I at salary range 769.

(6) Five Office Assistants III at salary range 585.

(7) Five Office Assistants II at salary range 527.

(8) Five Office Assistants I at salary range 441.

(e) Salary ranges indicated in paragraphs (1) through (8) of subdivision (d) are effective December 25, 1989.

The clerk may appoint any combination of Court Clerks described in paragraphs (1) and (2) of subdivision (d) not to exceed a total of one, and may appoint any combination of the specified number of personnel in each of paragraphs (4) through (8) of subdivision (d) not to exceed a total of five.

SEC. 21. Section 73684 of the Government Code is amended to read:

73684. The biweekly salaries of the following classes of positions shall be in accordance with the following schedule:

Position	Range	1	2	3	4	5
Municipal Court Administrator	Band D	1898	–	–	–	2626
Assistant Municipal Court Administrator	Band F	1282	–	–	–	1856
Municipal Court Division Manager	Band G	1067	–	–	–	1549
Administrative Services Assistant	Band H	790	–	–	–	1269

136400

Administrative Secretary-Conference	870	870	914	960	1008	1058
Research Attorney III	1484	1484	1558	1636	1718	1804
Research Attorney II	1375	1375	1444	1516	1592	1672
Research Attorney I	1075	1075	1129	1185	1244	1306
Municipal Court Interpreting Services Coordinator	846	846	888	932	979	1028
Municipal Court Interpreter	769	769	807	847	889	933
Secretary to the Municipal Courts III	753	753	791	831	873	917
Secretary to the Municipal Courts II	648	648	680	714	750	788
Secretary to the Municipal Courts I	588	588	617	648	680	714
Supervising Court Clerk	980	980	1029	1080	1134	1191
Senior Court Clerk	906	906	951	999	1049	1101
Court Clerk II	846	846	888	932	979	1028
Court Clerk I	769	769	807	847	889	933
Supervising Legal Process Clerk	980	980	1029	1080	1134	1191
Senior Legal Process Clerk	906	906	951	999	1049	1101
Legal Process Clerk II	846	846	888	932	979	1028
Legal Process Clerk I	769	769	807	847	889	933
Office Assistant III	585	585	614	645	677	711
Office Assistant II	527	527	553	581	610	641
Office Assistant I	441	441	463	486	510	536

Except as specifically provided in this article to the contrary, all benefits, privileges and other provisions affecting the employment of county employees shall apply to all officers and attachés of the municipal court.

SEC. 22. Section 73686 of the Government Code is amended to read:

73686. Any officer or attaché of the court who receives a promotion to a position having an overlapping salary range shall be placed upon the step of the new salary range consistent with the Fresno County Salary Resolution in effect on January 8, 1990.

SEC. 23. Section 73687 of the Government Code is amended to read:

73687. The minimum salary for each position shall normally be the initial hiring rate for the position. If it is difficult to secure qualified personnel at that rate or if a person of unusual qualifications is engaged, the court or the clerk, as the case may be, may request to hire at a higher step consistent with the Fresno County Salary Resolution in effect on January 8, 1990.

SEC. 24. Section 73691 of the Government Code is amended to read:

73691. A majority of the judges may appoint 11 full-time court reporters to serve at the pleasure of the judges and to be paid an annual salary established according to the following salary schedule:

Step 1. $37,432
Step 2. $39,307
Step 3. $41,253
Step 4. $43,316

Reporters shall initially be placed at step 1 of the salary schedule except reporters may be placed at a higher step with the approval of the county administrative officer, and shall be advanced one step annually upon the anniversary date of such employment. If, because of recruitment difficulties, it is necessary to appoint a court reporter at a step of the salary schedule which is above the step at which any court reporters are currently employed, all court reporters below that step will move to the higher step at the discretion of the judges of the court. Each such reporter shall accrue and be entitled to receive sick leave benefits at the rate of 3.6924 hours of sick leave with pay for each pay period or major fraction thereof, served up to an accumulative total of 156 working days. Each such reporter shall accrue and receive vacation at the same rate as judges of such court not to exceed 21 working days a year which may be accrued not to exceed 42 days to be taken at such time as the judge to which he or she has been assigned consents.

SEC. 25. Section 73692 of the Government Code is amended to read:

73692. Pursuant to Section 72194, the judges of the court may appoint as many additional reporters as the business of the court requires, who shall be known as official reporters pro tempore. They shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in the section for reporting testimony and proceedings the official reporters pro tempore shall be paid in accord with the following:

Each pro tempore reporter shall be paid one hundred forty-three dollars and ninety-seven cents ($143.97) for a full day on duty under order of the court. For purposes of receiving the above compensation, one or more of the following shall apply:

(1) The court has indicated in advance that the pro tempore assignment is for a full day.

(2) The pro tempore reporter was on duty for more than four hours.

Each pro tempore reporter shall be paid eighty-six dollars and thirty-eight cents ($86.38) for one half day of duty under order of the court when (a) the court has indicated in advance that the pro tempore assignment is for a half day and the pro tempore reporter is on duty for four hours or less, generally exclusive of the noon recess; or (b) the court has indicated in advance that the pro

tempore assignment is for a full day but the pro tempore reporter is on duty for four hours or less and consents to being released for the balance of the day.

Where a pro tempore reporter has agreed to a one-half day assignment, the courts shall make every practicable effort to assure that the pro tempore reporter shall not be on duty for longer than four hours, unless the pro tempore reporter agrees with the court to work beyond four hours. In the latter case, the full-day pro tempore rate of one hundred forty-three dollars and ninety-seven cents ($143.97) shall apply.

Nothing herein shall be construed to limit the court's authority to in all instances pay a pro tempore reporter at the rate of one hundred forty-three dollars and ninety-seven cents ($143.97) when, in the court's judgment, said rate is necessary to obtain pro tempore reporter services for the court.

The above payments shall upon order of the court be a charge against the general fund of the county.

SEC. 26. Section 73772 of the Government Code is amended to read:

73772. There shall be one clerk, who shall be the administrative officer of the court and who shall receive an annual salary recommended by the municipal court and approved by the board of supervisors.

Any change in the salaries in effect immediately prior to January 1, 1990, shall be on an interim basis and shall expire on January 1 of the second calendar year after the calendar year in which the change occurs, unless ratified by the Legislature.

SEC. 27. Section 73773 of the Government Code is amended to read:

73773. (a) The clerk, with the approval of the judges of the court, may appoint the following employees:

(1) One assistant clerk administrative officer.
(2) One administrative services assistant II.
(3) Five supervising legal clerks.
(4) One accountant II.
(5) Nine courtroom clerks.
(6) Two senior legal clerks.
(7) Fourteen legal clerks III.
(8) Fourteen legal clerks II.
(9) One deputy clerk I (to be converted to legal clerk I).
(10) Eleven legal clerks I.
(11) One senior secretary.
(12) One senior accounting assistant.
(13) Two accounting assistants.
(14) One CRT/input operator.
(15) Four intermediate clerk typists.
(16) One judicial support clerk.
(17) Such other employees as the board of supervisors approve upon the recommendation of the municipal court, each of which

shall receive a salary recommended by the municipal court and approved by the board of supervisors.

Any appointee shall be compensated at the first step and advanced to each higher step upon completion of the probationary period and each successive 12 months of service thereafter. Upon the recommendation of the municipal court and approval of the board of supervisors, such employees may be employed at, or may be granted, a special step increase to any step within the salary range on the basis of experience and qualifications.

(b) Any change in the salaries in effect immediately prior to January 1, 1990, shall be on an interim basis and shall expire on January 1 of the second calendar year after the calendar year in which the change occurs, unless ratified by the Legislature.

SEC. 28. Section 73794 of the Government Code is amended to read:

73794. (a) There shall be one traffic referee who shall be appointed by a majority of the judges of the court. A traffic referee shall receive a biweekly salary equal to 50 percent of the salary of a municipal court judge. The provisions of Section 72400 do not apply to the traffic referees appointed pursuant to this section.

A traffic referee of the court shall have the powers and duties specified for traffic referees in Sections 72401, 72402, and 72403.

(b) There shall be one traffic trial commissioner who shall be appointed by a majority of the judges of the court, and who shall receive a biweekly salary equal to 75 percent of the salary of a municipal court judge.

SEC. 29. Section 73954 of the Government Code is amended to read:

73954. The court administrator may appoint:

(a) One assistant court administrator at the direction of a majority of the judges of the court who shall serve at the pleasure of the majority of the judges. The biweekly salary of the assistant court administrator shall be within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary and any advancement or reduction within the range shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) Two deputy clerk-division managers III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division managers II.

(c) Five deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a

biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(d) Ten deputy clerks V, who shall receive a salary at a rate equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities. Notwithstanding subdivision (b) of Section 74749, persons who hold the position of deputy clerk on January 1, 1991, may be appointed by the court administrator to the position of deputy clerk V without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(e) Sixteen deputy clerks IV, who shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III.

(f) Ninety deputy clerks III, II, I, or deputy clerk-intermediate clerk typists as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I class may be at any step within the salary range. Up to four of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego.

(g) One deputy clerk-municipal court secretary. A deputy clerk-municipal court secretary shall receive a biweekly salary at a rate equal to that specified for criminal legal secretary III in the classified service of the County of San Diego. Appointments to the class of deputy-clerk municipal court secretary may be at any step within the salary range at the discretion of the court administrator. Notwithstanding subdivision (b) of Section 74749, persons who hold the position of deputy clerk-administrative secretary IV on January 1, 1991, may be appointed by the court administrator to the position of deputy clerk-municipal court secretary without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(h) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A

deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(i) Five deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(j) One deputy clerk-interpreter coordinator who shall receive a biweekly salary at a rate equal to that specified for deputy clerk V. Appointments to deputy clerk interpreter-coordinator may be at any step within the salary range at the discretion of the court administrator.

(k) One deputy clerk-administrative assistant I, II, or III, as the case may be. The deputy clerk-administrative assistant I, II, or III, shall receive a biweekly salary at a rate equal to that specified for administrative assistant I, II, or III, respectively, in the classified service of the County of San Diego.

(*l*) Four deputy administrative clerks III, II, or I, as the case may be. Each deputy administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. Each deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. Each deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(m) One deputy clerk-senior, associate, or assistant accountant, as the case may be. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service in the County of San Diego. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego.

(n) One deputy clerk-research attorney I or deputy clerk-law clerk, as the case may be. Persons appointed to this position on or after January 1, 1991, shall serve at the pleasure of the court administrator. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for law clerk in the classified service of the County of San Diego.

(o) Notwithstanding subdivision (b) of Section 73957, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level

deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(p) Notwithstanding subdivision (b) of Section 73957, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73950 to 73960, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of such classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(q) Notwithstanding subdivision (b) of Section 73957, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator.

A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(r) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 73953.

(s) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (n), inclusive, (p), and (q) of this section and under Section 73959 may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

SEC. 30. Section 73959 of the Government Code is amended to read:

73959. By order entered in the minutes of the court, a majority of judges may appoint three judicial secretaries or supervising judicial secretaries, as the case may be, who shall serve at the pleasure of the judges. The classification of supervising judicial secretary shall be limited to one position, and this one position only may be authorized by joint action of a majority of the judges and the board of supervisors pursuant to subdivision (s) of Section 73954. The supervising judicial secretary shall receive a biweekly salary at a rate equal to that specified for the classification of criminal legal secretary III in the classified service of the County of San Diego. The classification of judicial secretary shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego. Whenever the salary of criminal legal secretary III or administrative secretary IV in the

classified service of the County of San Diego is adjusted by the board of supervisors, the salaries of the supervising judicial secretaries and the judicial secretaries, respectively, shall be adjusted a commensurate amount, effective on the same date. Notwithstanding the provisions of subdivision (a) of Section 73957, the classifications of supervising judicial secretary and judicial secretary, respectively, shall receive and be entitled to the same number of holidays, leaves of absence, retirement, and all other fringe benefits as are now or may hereafter be provided for the classifications of criminal legal secretary III and administrative secretary IV, respectively, in the classified service of the County of San Diego.

SEC. 31. Section 74023 of the Government Code is amended to read:

74023. The municipal court administrator shall appoint, in accordance with Placer County civil service rules, all of the following:

(a) Two supervising municipal court clerks for the court, who shall perform such duties as may be required by the court or the judges.

(b) Six deputy clerks, who shall be senior municipal court clerks.

(c) Sixteen full-time and two half-time deputy clerks, who shall be municipal court clerks I or II.

(d) One deputy clerk, who shall be a master calendar clerk.

(e) One account clerk I, II, or III.

(f) One secretary I, II, or III.

(g) Three court reporters.

SEC. 32. Section 74030 of the Government Code is amended to read:

74030. (a) The positions enumerated in Sections 74022 to 74026, inclusive, shall receive a biweekly salary at step A of the range set forth below, as provided in Chapter 14 of the Placer County Code.

Step increases may be awarded at 5 percent at the end of the first six months and thereafter 5 percent annually for the next 48 months to a maximum of 20 percent over the amount specified as step A:

Position	Salary Range
Municipal court administrator	49.0
Supervising municipal court clerk	37.5
Deputy clerk, municipal court clerk I	31.5
Deputy clerk, municipal court clerk II	33.5
Deputy clerk, master calendar clerk	36.5
Senior municipal court clerk	35.5
Account clerk I	30.5
Account clerk II	32.5
Account clerk III	34.5
Secretary I	28.5
Secretary II	30.5
Secretary III	32.5
Court reporter	44.5

(b) If the board of supervisors adopts a revised salary schedule for county employees, the new schedule shall apply equally to employees of municipal courts and conversion of the new schedule shall be made for such employees in the same manner on the same date as for such other county employees. Also, employees and officers of the municipal court shall be entitled to all employee benefits as they are now provided and made applicable to positions within county service. All matters affecting the administration of salary and benefits, the selection, appointment, and reclassification of such municipal court officers and employees in those positions which they hold which are not specifically determined by the provisions of state law shall be governed by the personnel provisions of the Placer County Code. Any changes in compensation made pursuant to this subdivision shall be on an interim basis and shall expire January 1, of the second calendar year following such changes unless ratified by the Legislature.

SEC. 32.5. Section 74133 of the Government Code is amended to read:

74133. There shall be one clerk of each judicial district who shall be appointed by and hold office at the pleasure of the judge or a majority of the judges of the judicial district. The clerk shall serve as the court administrator.

SEC. 33. Section 74134 of the Government Code is amended to read:

74134. In the Riverside Judicial District, the salary of the clerk/administrator—Riverside Judicial District shall be on range 389 and the clerk/administrator may appoint:

(a) One accounting technician on range 227.

(b) One assistant clerk/administrator-Riverside Judicial District on range 340.

(c) One administrative services officer I on range 298.

(d) Thirty-six municipal court clerks on range 194.

(e) Three municipal court division supervisors on range 254.

(f) Fourteen municipal courtroom clerks on range 235.

(g) One revenue and recovery technician II on range 211.

(h) One secretary on range 227.

(i) Three senior accounting clerks on range 197.

(j) One senior accounting technician on range 262.

(k) Seven senior municipal court clerks on range 215.

(*l*) One stock clerk on range 171.

(m) One supervising municipal courtroom clerk on range 254.

(n) One municipal court secretary on range 225.

(o) One municipal court operations manager on range 317.

SEC. 33.5. Section 74135 of the Government Code is repealed.

SEC. 34. Section 74135.1 of the Government Code is amended to read:

74135.1. By majority vote, the judges may appoint two court

commissioners for the Riverside Judicial District. However, at such time as the board of supervisors finds there are sufficient funds for a third commissioner and adopts a resolution to that effect, there shall be three court commissioners; provided, that if the Legislature authorizes one additional judge for the district and the board of supervisors finds there are sufficient funds for that additional judge and adopts a resolution to that effect, following the appointment or election of the additional judge, there shall be no more than two court commissioners in the Riverside Judicial District.

The court commissioners shall meet the qualifications and have powers and duties specified in Sections 72190 and 72190.1 of this code, and Sections 259 and 259a of the Code of Civil Procedure. Any commissioner so appointed shall also have the power and duties of a traffic referee, as provided in Article 9 (commencing with Section 72400) of Chapter 8 of Title 8. The salary of a commissioner for all duties performed pursuant to this section shall be equal to 75, 80, or 85 percent of the salary of a judge of the municipal court, as determined by the court.

The additional commissioner position authorized by amendments to this section enacted during the 1990 portion of the 1989–90 Regular Session shall not be counted in the calculation of trial court funding pursuant to Section 77202, and the salary for this position shall not be considered as a part of court operations for Riverside County for purposes of Sections 77003 and 77204.

SEC. 35. Section 74136 of the Government Code is amended to read:

74136. In the Desert Judicial District, the salary of the clerk/administrator—Desert Judicial District shall be on range 389 and the clerk/administrator may appoint:

(a) One accounting clerk on range 166.

(b) One accounting technician on range 227.

(c) One assistant clerk/administrator—Desert Judicial District on range 340.

(d) Four court reporters at one thousand seven hundred seventy-nine dollars and twenty cents ($1,779.20) biweekly.

(e) Three municipal court branch managers on range 270.

(f) Forty-three municipal court clerks on range 194.

(g) Six municipal court division supervisors on range 254.

(h) Nine municipal courtroom clerks on range 235.

(i) One secretary I on range 227.

(j) Two senior accounting clerks on range 197.

(k) Eight senior municipal clerks on range 215.

SEC. 36. Section 74136.1 is added to the Government Code, to read:

74136.1. At such time as the board of supervisors finds that there are sufficient funds for a second court commissioner for the Desert Judicial District and adopts a resolution to that effect, there shall be two court commissioners for the Desert Judicial District. However, if the Legislature authorizes one additional judge for the district and

the board of supervisors finds there are sufficient funds for that additional judge and adopts a resolution to that effect, following the appointment or election of the additional judge, there shall be one court commissioner in the Desert Judicial District. The court commissioner shall have the same powers and receive the same salary specified in Section 74135.1.

The commissioner position shall not be counted in the calculation of trial court funding pursuant to Section 77202, and the salary for this position shall not be considered as a part of court operations for Riverside County for purposes of Sections 77003 and 77204.

SEC. 36.2. Section 74137 of the Government Code is repealed.

SEC. 36.4. Section 74138 of the Government Code is amended to read:

74138. In the Corona Judicial District, the Riverside clerk/administrator may appoint:

(a) One assistant clerk/administrator on range 305.
(b) Ten municipal court clerks on range 194.
(c) Two municipal court division supervisors on range 254.
(d) Three municipal courtroom clerks on range 235.
(e) One senior accounting clerk on range 197.
(f) Three senior municipal court clerks on range 215.

SEC. 37. Section 74141 of the Government Code is amended to read:

74141. In the Mt. San Jacinto Judicial District the salary of the clerk/administrator—Mt. San Jacinto Judicial District shall be on range 389, and the clerk/administrator may appoint:

(a) One accounting clerk on range 166.
(b) Two accounting technicians on range 227.
(c) One assistant clerk/administrator-mid-county on range 340.
(d) Two municipal court branch managers on range 270.
(e) Seventeen municipal court clerks on range 194.
(f) Two municipal court division supervisors on range 254.
(g) Six municipal courtroom clerks on range 235.
(h) One senior accounting clerk on range 197.
(i) Five senior municipal court clerks on range 215.
(j) One secretary I on range 227.
(k) One administrative services officer I on range 298.

SEC. 37.5. Section 74143 of the Government Code is amended to read:

74143. In the Three Lakes Judicial District, the salary of the clerk/administrator—Three Lakes Judicial District shall be on range 343, and the clerk/administrator may appoint:

(a) One municipal court branch manager on range 270.
(b) Eight municipal court clerks on range 194.
(c) Three municipal court division supervisors on range 254.
(d) Three municipal courtroom clerks on range 235.
(e) One senior municipal court clerk on range 215.

SEC. 38. Section 74344 of the Government Code is amended to read:

74344. The court administrator may appoint:

(a) One assistant court administrator, with the consent of a majority of the judges of the court, who shall be empowered to act in the place and stead of the court administrator in the event that the court administrator is absent or unavailable for any reason. Persons appointed to this position on or after January 1, 1991, shall serve at the pleasure of the court administrator. The assistant court administrator shall receive a biweekly salary within the biweekly rate range ES-12 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) One deputy court administrator, with the consent of a majority of the judges of the court, who shall be empowered to act in the place and stead of the assistant court administrator in the event that the assistant court administrator is absent or unavailable for any reason. Persons appointed to this position on or after January 1, 1991, shall serve at the pleasure of the court administrator. The deputy court administrator shall receive a salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the Chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(c) Four deputy clerk-division managers III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II. Two of these positions may be designated as branch managers. When a position is designated branch manager, the incumbent shall receive a bonus of 10 percent.

(d) Five deputy clerk-division managers II who shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V.

(e) Thirteen deputy clerks V each of whom shall receive a biweekly salary at a rate 32.6 percent higher than that specified for deputy clerk III.

(f) Fifty-eight deputy clerks IV, or senior deputy clerks, as the case may be. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerks in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The

class of senior deputy clerk shall not exceed 17 positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities.

(g) One hundred eighty-nine deputy clerks III, II, I, or deputy clerk-intermediate clerk typists as the case may be. Each deputy clerk III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each deputy clerk I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. Appointments to deputy clerk I may be at any step within the salary range at the discretion of the court administrator. Up to 10 of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego.

(h) Two deputy clerk-assistants, associate or senior accountants, as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego.

(i) Twelve deputy clerk-court interpreters, each of whom shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(j) One deputy clerk-interpreter coordinator who shall receive a biweekly salary at a rate equal to that specified for deputy clerk V. Appointments to deputy clerk-interpreter coordinator may be at any step within the salary range at the discretion of the court administrator.

(k) One deputy clerk-municipal court secretary who shall receive a biweekly salary at a rate equal to that specified for criminal legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range. Notwithstanding subdivision (b) of Section 74358, persons who hold the position of deputy clerk-administrative secretary IV on January 1, 1991, may be appointed by the court administrator to the position of deputy clerk-municipal court secretary without further examination subject to certification by the court administrator that

the person possesses the minimum qualifications and the necessary skills to perform the duties of the position.

(*l*) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(m) One deputy clerk-administrative service manager I or II as the case may be. A deputy clerk-administrative services manager I or II shall receive a biweekly salary at a rate equal to that specified for administrative services manager I or II, respectively, in the classified service of the County of San Diego.

(n) Two deputy clerk-administrative assistants II, I, or trainee as the case may be. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant trainee shall receive a biweekly salary at a rate equal to that specified for administrative assistant trainee in the classified service of the County of San Diego.

(o) One deputy clerk-principal administrative analyst. A deputy clerk-principal administrative analyst shall receive a biweekly salary at a rate equal to that specified for the class of principal administrative analyst in the classified service of the County of San Diego.

(p) One deputy clerk-DP systems manager who shall receive a biweekly salary at a rate equal to that specified for the class of EDP systems manager in the classified service of the County of San Diego.

(q) Seven deputy clerk-senior systems analysts, associate systems analysts, assistant systems analysts, or systems analyst trainees, as the case may be. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(r) One deputy clerk-administrative assistant II, who shall receive

a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego.

(s) The positions identified in subdivisions (p) and (q) except for one position in subdivision (q) shall be administered by the court administrator of the San Diego Judicial District subject to policy direction by the court administrators of the San Diego, North County, El Cajon, and South Bay Judicial Districts. The purpose and intent of this subdivision is to allow all four municipal court judicial districts to determine the work assignments of data-processing personnel.

(t) One deputy clerk-print shop helper, offset equipment operator, or publication supervisor, as the case may be. A deputy clerk-print shop helper shall receive a biweekly salary at a rate equal to that specified for print shop helper in the classified service of the County of San Diego. A deputy clerk-offset equipment operator shall receive a biweekly salary at a rate equal to that specified for offset equipment operator in the classified service of the County of San Diego. A deputy clerk-publication supervisor shall receive a biweekly salary at a rate equal to that specified for publications supervisor in the classified service of the County of San Diego.

(u) One deputy clerk-research attorney III. A deputy clerk-research attorney III shall receive a biweekly salary at a rate equal to that specified for deputy county counsel III in the classified service of the County of San Diego. Persons appointed to this position after Janaury 1, 1991, shall serve at the pleasure of the court administrator.

(v) Two deputy clerk-research attorneys I or research attorneys II, as the case may be. Notwithstanding subdivision (b) of Section 74348, persons appointed to these positions on or after January 1, 1990, shall serve at the pleasure of the court administrator. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary at a rate equal to that specified for deputy county counsel II in the classified service of the County of San Diego.

(w) One deputy clerk-legal assistant I or II, as the case may be. A deputy clerk-legal assistant I shall receive a biweekly salary at a rate equal to that specified for legal assistant I in the classified service of the County of San Diego. A deputy clerk-legal assistant II shall receive a biweekly salary at a rate equal to that specified for legal assistant II in the classified service of the County of San Diego.

(x) Notwithstanding subdivision (b) of Section 74348, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Section 74345 pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to

the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the designated range at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that person serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(y) Notwithstanding subdivision (b) of Section 74348, up to 10 extra help deputy clerk-junior clerk positions (hourly rate) at the junior clerk-typist level, to be appointed by and serve at the pleasure of the court administrator. These appointments shall be temporary for a period not to exceed six months, plus one additional period at the court administrator's option, not to exceed six months.

(z) Notwithstanding subdivision (b) of Section 74348, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(aa) Notwithstanding subdivision (b) of Section 74348, the court administrator may appoint up to 30 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an

hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(bb) Three deputy clerk-administrative clerks III, II, or I, as the case may be. A deputy clerk-administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. A deputy clerk administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy clerk administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(cc) One deputy clerk-personnel officer I or II as the case may be. A deputy clerk-personnel officer I or II shall receive a biweekly salary at a rate equal to that specified for departmental personnel officer I or II, respectively, in the classified service of the County of San Diego.

(dd) Two deputy clerk-analysts trainee I, II, or III, as the case may be. A deputy clerk-analyst trainee shall receive a biweekly salary at a rate equal to that specified for analyst trainee in the classified service of the County of San Diego. A deputy clerk-analyst I, II, or III, shall receive a biweekly salary at a rate equal to that specified for analyst I, II, or III, respectively, in the classified service of the County of San Diego.

(ee) Notwithstanding any other provision of law, the number of positions in classifications authorized under (c) to (y), inclusive, and (aa), (bb), (cc), and (dd) of this section and under Section 74352 may be increased by up to 136 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to the positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution becomes

effective, unless earlier ratified by the Legislature.

SEC. 39. Section 74345 of the Government Code is amended to read:

74345. (a) All matters affecting the employment and compensation (including salary and fringe benefits) of municipal court officers and attachés not specifically provided for in this article or other provisions of state law shall be governed by the then-current ordinances and resolutions of the Board of Supervisors of the County of San Diego in the same manner as those employment and compensation provisions may now or hereafter affect employees of the County of San Diego in the comparable classes specified in this section or in Sections 73649, 73957, 74348, and 74749 if other comparable classes are specified in those sections. Whenever in the ordinances or resolutions action or approval is required to be taken or given by the chief administrative officer or the county personnel director, it shall be taken or given, as to municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges or their designees, or as to persons serving at the pleasure of the court, by the majority of the judges of the municipal court, or their designees.

(b) The hereinafter specified court classes are deemed to be comparable in job level to the specified comparable classes in the service of the County of San Diego. Whenever the salaries of such classes in the service of the County of San Diego are adjusted by the board of supervisors, the salaries of the comparable classes in the office of the court administrator shall be adjusted a commensurate amount effective on the same date. In no event shall the salary of the clerk or any deputy clerk who occupied his or her position on the day prior to the effective date of this section be less than his or her salary on that day. Any person whose title is changed as a result of the enactment of or of any amendments to this article shall receive credit for continued service which he or she would be entitled under his or her previous position and shall receive compensation at the step covering such length of service. Thereafter, any increments earned by additional service in grade shall take effect upon the first day of the pay period following completion of such required service. The comparable classes are as follows:

Municipal Court Class	County Class
Deputy clerk-division manager III	Legal procedures clerk III
Deputy clerk-division manager II	Legal procedures clerk III
Deputy clerk-division manager I	Legal procedures clerk III
Deputy clerk-intermediate clerk typist	Intermediate clerk typist
Deputy clerk I	Legal procedures clerk I
Deputy clerk II	Legal procedures clerk II
Deputy clerk III	Legal procedures clerk III

Deputy clerk IV	Legal procedures clerk III
Deputy clerk V	Legal procedures clerk III
Deputy clerk-administrative clerk I, II, and III	Legal procedures clerk III
Deputy clerk-personnel officer II	Departmental personnel officer II
Deputy clerk-personnel officer I	Departmental personnel officer I
Deputy clerk-data entry operator	Data entry operator
Deputy clerk-court interpreter	Legal procedures clerk III
Deputy clerk-interpreter coordinator	Legal procedures clerk III
Deputy clerk-administrative secretary III	Administrative secretary III
Deputy clerk-administrative secretary II	Administrative secretary II
Deputy clerk-administrative secretary I	Administrative secretary I
Deputy clerk-municipal court secretary	Criminal legal secretary III
Deputy clerk-administrative assistant III	Administrative assistant III
Deputy clerk-administrative assistant II	Administrative assistant II
Deputy clerk-administrative assistant I	Administrative assistant I
Deputy clerk-administrative assistant trainee	Administrative assistant trainee
Deputy clerk-staff development specialist	Staff development specialist
Deputy clerk-staff development coordinator	Staff development specialist
Deputy clerk-senior systems analyst	Senior systems analyst
Deputy clerk-associate systems analyst	Associate systems analyst
Deputy clerk-assistant systems analyst	Assistant systems analyst
Deputy clerk-systems analyst trainee	Systems analyst trainee
Deputy clerk-municipal court computer specialist I	Department computer specialist I
Deputy clerk-municipal court computer specialist II	Departmental computer specialist II
Deputy clerk-municipal court computer specialist III	Departmental computer specialist III
Deputy clerk-senior accountant	Senior accountant
Deputy clerk-associate accountant	Associate accountant
Deputy clerk-assistant accountant	Assistant accountant

Deputy clerk-law clerk	Law clerk
Deputy clerk-research attorney I	Deputy county counsel I
Deputy clerk-research attorney II	Deputy county counsel II
Deputy clerk-research attorney III	Deputy County Counsel III
Deputy clerk-legal assistant I	Legal assistant I
Deputy clerk-legal assistant II	Legal assistant II
Deputy clerk-printshop helper	Print shop helper
Deputy clerk-publication supervisor	Publication supervisor
Deputy clerk-offset equipment operator	Offset equipment operator
Deputy clerk-DP systems manager	DP systems manager
Deputy clerk-administrative services manager I	Administrative services manager I
Deputy clerk-administrative services manager II	Administrative services manager II
Deputy clerk-administrative services manager III	Administrative services manager III
Senior deputy clerk	Legal procedures clerk III
Deputy clerk-principal administrative analyst	Principal administrative analyst
Deputy clerk-analyst trainee	Analyst trainee
Deputy clerk-analyst I	Analyst I
Deputy clerk-analyst II	Analyst II
Deputy clerk-analyst III	Analyst III
Deputy clerk-substance abuse assessor I	Deputy probation officer
Deputy clerk-substance abuse assessor II	Deputy probation officer

Notwithstanding the comparable classes set forth above, if pursuant to subdivision (e) of Section 73644, subdivision (f) of Section 74344, subdivision (d) of Section 73954, and subdivision (h) of Section 74745, the class of deputy clerk IV is entitled to receive a biweekly salary at a rate equal to that specified for superior court clerks in the superior court service of the County of San Diego, the comparable county class for deputy clerk IV and senior deputy clerk shall be the superior court clerk in the superior court service of the County of San Diego, except with respect to benefits in which case the comparable county class shall be legal procedures clerk III. Further, notwithstanding the comparable classes set forth above, the comparable class for the class of deputy clerk-court interpreter for purposes of salary shall be the class of superior court clerk interpreter in the superior court service of the County of San Diego and the comparable class with respect to benefits shall be the class of legal procedures clerk III.

(c) Persons employed on and after January 1, 1975, in a class eligible for advancement in range shall receive the same step

increases applicable to persons so employed in the County of San Diego on or after July 1, 1974. Persons employed prior to January 1, 1975, in a class eligible for advancement in range shall receive the same step increases applicable to persons so employed in the County of San Diego prior to July 1, 1974.

(d) Officers and attachés may be appointed to a class and position in the service of a court in one judicial district from the service of a court in another judicial district within the County of San Diego, from the service of the County of San Diego, from the service of the Superior Court of San Diego County, or from the service of the marshal, in the same manner that employees of the County of San Diego may be appointed in departments of the county. In determining the step of the salary range at which such employee shall be paid, the employee shall be given credit for the immediately preceding continuous prior service to a court, the marshal, or the County of San Diego.

(e) A promotion is an appointment to a class compensated at a higher base salary, at any like-numbered step, than the class relinquished. Upon promotion an employee shall be placed at the lowest step which provides at least a 5-percent increase over the base salary of the step occupied in the former class, but in no event higher than the top step of the class to which promoted.

(f) A demotion is an appointment to a class compensated at a lower base salary, at any like-numbered step, than the class relinquished. The demoted employee's step shall be set at the same numbered step for the demoted class as for the former class, except that the step shall not be set lower than the normal entry step. If the demotion is to the class in which the employee served immediately prior to being promoted, the employee's step shall be that held immediately prior to the promotion.

SEC. 40. Section 74352 of the Government Code is amended to read:

74352. By order entered upon the minutes of the court, a majority of the judges of the municipal court of the San Diego Judicial District may appoint as many competent judicial secretaries as the business of the court requires, not to exceed eight, who shall serve at the pleasure of the judges of the court. One of these secretaries shall be appointed by the majority of the judges of the court as the chief judicial secretary, who, while serving in that capacity, shall receive a biweekly salary at a rate 25 percent higher than that specified for judicial secretary. Appointment to such position shall be at step 5.

Each judicial secretary other than the chief judicial secretary shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego, commencing at step 4 at initial employment and advancing to step 5 at the end of one year of continuous service.

Whenever the salary of administrative secretary IV of the classified service of the County of San Diego is adjusted by the Board of Supervisors of San Diego County, the salaries of the chief judicial

secretary and judicial secretaries shall be adjusted a commensurate percentage on the same date, such adjustments to take effect on the effective date of any amendments to this article.

Notwithstanding the provisions of Section 74348, the chief judicial secretary and judicial secretaries shall receive and be entitled to the number of holidays, leaves of absence and all other fringe benefits as are now or may hereafter be provided for administrative secretary IV in the classified service of the County of San Diego. However, the class of judicial secretary shall be entitled to: (a) earn sick leave credit at the rate of 5.385 percent of each hour of paid service during the pay period; (b) earn vacation credit at the rate of 5.769 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 25 working days where the employee has less than 10 years of continuous service; and (c) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 35 working days where the employee has 10 years or more of continuous service.

SEC. 41. Section 74368 of the Government Code is amended to read:

74368. The marshal may make the following appointments:

(a) One assistant marshal.

(b) Four captains.

(c) Four lieutenants.

(d) Nineteen sergeants.

(e) One hundred eighty-seven deputy marshals.

Any deputy marshal who may be assigned by the marshal to one of seven positions designated as lead deputy shall receive, while serving in that capacity, biweekly compensation at a rate 5 percent higher than that received by the deputy.

The marshal may, at his or her discretion, fill a deputy marshal or court service officer position by accepting a lateral transfer from another California peace officer agency. The transferee shall have completed a California P.O.S.T. certified basic academy and been employed for at least one year in a position enumerated in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code within the past three years.

(f) One administrative secretary I, II, or III.

(g) One administrative services manager I, II, or III or administrative assistant III.

(h) Twenty intermediate typists.

(i) Six senior typists.

(j) Thirty-five field service officers.

Notwithstanding any other provisions of this article, in no event shall a field service officer's salary be less than 65 percent of the salary of a deputy marshal at the corresponding pay step. The field service officer is a peace officer trainee position which requires appointees to be at least 18 years of age and meet the qualifications and standards prescribed for deputy marshals. At the time an incumbent

in the class of field service officer attains the age of 21, he or she may be appointed by the marshal to a position in the class of deputy marshal or court service officer, provided such position is open, without further qualification or examination.

A field service officer shall receive 65 percent of the uniform allowance prescribed for deputy marshals. In the event that a field service officer is appointed to the class of deputy marshal or court service officer, he or she shall receive the amount of reimbursement of the cost of required uniforms and equipment prescribed for a newly hired deputy marshal or court service officer, less any reimbursement received by him or her for the cost of required field service officer uniforms and equipment.

(k) One junior typist. Each vacancy occurring in this class shall cause a corresponding reduction in the number of junior typists hereby authorized, provided, however, that such vacancy shall increase by one, a position in the class intermediate typist under subdivision (h).

(*l*) Nine legal procedures clerks III.

(m) Thirty legal procedures clerks II or I.

(n) Ninety-six court service officers. In no event shall a court service officer's salary be less than 80 percent of a deputy marshal at the corresponding pay step. A court service officer shall receive the same uniform allowance prescribed for a deputy marshal, under the same conditions prescribed for deputy marshals. The marshal may appoint a court service officer to a vacant position of deputy marshal without further qualification or examination. In the event that a court service officer is appointed to the class of deputy marshal, he or she shall receive the amount of reimbursement prescribed for a newly hired deputy marshal, less any reimbursement received by him or her for the cost of required court service officer uniforms and equipment. Court service officers shall be peace officers pursuant to Section 830.36 of the Penal Code. Notwithstanding any other provision of law, court service officers shall be general members of the county employees retirement system.

Any court service officer who meets length of service, educational and performance requirements established by the marshal and approved by the county personnel director may receive a biweekly compensation at a rate 7½ percent higher than that otherwise received by a court service officer. The number of court service officer positions so compensated shall not exceed one-half the total number of court service officers then employed by the marshal.

(o) Any person specified in subdivisions (f), (h), and (i), who may be assigned by the marshal to one of the positions designated as executive secretary or administrative-personnel secretary shall receive, while serving in that capacity, biweekly compensation at a rate 10 percent higher than that specified for such person's class and step.

(p) Two supervising legal services clerks.

(q) Three communications dispatchers I or II.

(r) Two administrative assistants III, II, I, or trainee.

(s) One EDP coordinator, or senior systems analyst.

(t) Notwithstanding Section 74369, up to 15 extra help positions (hourly rate) to be appointed at a level as determined by and serve at the pleasure of the marshal. Such appointments shall be temporary for a period not to exceed six months, plus one additional period at the marshal's option, not to exceed six months. Notwithstanding any other provisions of this section, the marshal may fill these positions with persons employed for less than 91 working days during a fiscal year on a part-time basis.

(u) Notwithstanding Section 74369, the marshal may appoint up to six temporary extra help marshal student workers I, II, or III who shall be paid at an hourly rate and shall serve at the pleasure of the marshal. A marshal student worker I, II, or III shall receive an hourly salary at the rate equal to that specified for the class of student worker I, II, or III respectively in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a marshal student worker class may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(v) Two associate systems analysts or assistant systems analysts.

(w) Notwithstanding Section 74369, up to five provisional workers may be appointed by and serve at the pleasure of the marshal. The class of provisional worker provides for temporary appointments to positions in classes not listed in Section 74370 pending a review and evaluation of the duties of these positions by the marshal, and the establishment of specific classes as provided in this subdivision. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the marshal as to the establishment of such classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment, at a rate determined by the marshal following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to provisional workers shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the marshal and the board of supervisors in accordance with established county personnel and budgetary procedures. The marshal may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying provisional worker positions shall have their

appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the marshal and the board of supervisors.

(x) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (s), inclusive, (u), (v) and (w) of this section may be increased by up to 100 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature.

SEC. 42. Section 74370 of the Government Code is amended to read:

74370. (a) The hereinafter enumerated classes of positions in the marshal's office of San Diego County are deemed to be equivalent in job, salary level, and fringe benefit level to certain classes in the service of the County of San Diego and whenever the salary of a class in the service of the County of San Diego is adjusted by the board of supervisors, the salary of the equivalent class in the marshal's office shall be adjusted in the same amount, effective on the same date.

The equivalent classes are as follows:

Marshal class	County class
Assistant marshal	Assistant sheriff
Captain	Deputy sheriff-captain
Lieutenant	Deputy sheriff-lieutenant
Sergeant	Deputy sheriff-sergeant
Deputy marshal	Deputy sheriff
Court service officer	Revenue and recovery officer II
Field service officer	Revenue and recovery officer trainee
Legal procedures clerk III	Legal procedures clerk III
Legal procedures clerk II	Legal procedures clerk II
Legal procedures clerk I	Legal procedures clerk I
Senior typist	Senior clerk-typist
Intermediate typist	Intermediate clerk-typist
Junior typist	Junior clerk-typist

Administrative assistant III	Administrative assistant III
Administrative assistant II	Administrative assistant II
Administrative assistant I	Administrative assistant I
Administrative trainee	Administrative trainee
EDP coordinator	EDP coordinator
Senior systems analyst	Senior systems analyst
Associate systems analyst	Associate systems analyst
Assistant systems analyst	Assistant systems analyst
Administrative secretary III	Administrative secretary III
Administrative secretary II	Administrative secretary II
Administrative secretary I	Administrative secretary I
Administrative services manager I	Administrative services manager I
Administrative services manager II	Administrative services manager II
Administrative services manager III	Administrative services manager III
Supervising legal services clerk	Supervising legal services clerk
Communications dispatcher I	Communications dispatcher I
Communications dispatcher II	Communications dispatcher II

(b) In addition to the salary provided in this article, officers, deputies, and other attachés of the marshal's office shall receive, and they shall be entitled to, the same number of holidays, leaves of absence, retirement benefits, deferred compensation benefits, and all other fringe benefits as are now or may hereafter be provided for the specified comparable employees of the County of San Diego.

For purposes of providing the fringe benefits specified in this section, each class in the marshal's office shall receive benefits equal to those of the comparable class in the service of the County of San Diego as specified in this section. The marshal shall receive the same fringe benefits received by the classification of Chief Probation Officer of the County of San Diego. However, all officers, deputies, and other attaches of the marshal's office shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego.

The purpose and intent of this subdivision is to provide all marshal's personnel with any and all fringe benefits, but no more than those, which are available to their comparable classes in the service of the County of San Diego, as specified in this section. Whenever action or approval by the chief administrative officer or the county personnel director is required for a county benefit, it shall be taken or given as to comparable marshal's employees, by the marshal, or as to the marshal by the majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the

specified comparable classes. The marshal may adopt rules for the conduct of, and personnel privileges to be afforded to, marshal employees, excluding fringe benefits.

SEC. 43. Section 74604 of the Government Code is amended to read:

74604. There shall be one clerk of the court known as the court executive officer, who shall be appointed by the presiding judge with the concurrence of a majority of the judges of the court, and shall hold office at the pleasure of the majority of the judges. The monthly compensation to be paid to the court executive officer shall be Range 2482, Step 5, of the San Luis Obispo County Salary Table. In addition to any other duties imposed on such officer by law, the court executive officer shall have the following duties:

(a) To direct and coordinate the nonjudicial activities of the court.

(b) To coordinate the personnel practices in compliance with rules of the court.

(c) To prepare and administer the budget of the court.

(d) To coordinate with other county agencies the acquisition, utilization, maintenance and disposition of county facilities, equipment and supplies necessary for operation of the court.

(e) To initiate studies and prepare appropriate recommendations and reports to the presiding judge relating to the business of the court, including, but not limited to, such matters as standardization of forms, procedures, and classification and compensation of officers and employees.

(f) To collect, compare, and analyze statistical data on a continuing basis concerning the status of judicial and nonjudicial business of the court and to prepare periodic reports and recommendations based on such data.

(g) To serve as liaison for the court with other persons, committees, boards, groups, and associations as directed by the presiding judge.

(h) To provide for and conduct a program of in-service training for the personnel of the municipal court.

SEC. 44. Section 74607 of the Government Code is amended to read:

74607. (a) The presiding judge may make appointments to the following authorized positions:

Number	Classification	Salary Range
1	Assistant Clerk Administrator	1540
1	Calendar Coordinator	1091
2	Calendar Coordinator—1/2 time	1091
11	Municipal Court Clerk Trainee, or	0848
	Municipal Court Clerk I, or	0929
	Municipal Court Clerk II	0997
2	Municipal Court Clerk I—1/2 time	0929
2	Municipal Court Accounting Technician	0966

2	Municipal Court Account Clerk	0756
1	Accountant I, or	1166
	Accountant II	1334
29	Municipal Court Legal Process Clerk, or	0708
	Municipal Court Legal Process Clerk I, or	0848
	Municipal Court Legal Process Clerk II, or	0929
3	Municipal Court Legal Process Clerk III	0984
2	Municipal Court Legal Process Clerk III—1/2 time	0984
4	Supervising Municipal Court Clerk	1091
1	Administrative Services Officer I	1166
1	Court Data Manager	1939
1	Mail Clerk	0708

(b) At no time shall the number of Municipal Court Clerk II positions set forth in subdivision (a) exceed six.

(c) At no time shall the number of Municipal Court Legal Process Clerk II positions set forth in subdivision (a) exceed nine. At no time shall the number of Municipal Court Legal Process Clerks I and II positions set forth in subdivision (a) exceed 13.

SEC. 45. Section 74610 of the Government Code is amended to read:

74610. (a) The positions enumerated in Sections 74604, 74607, and 74608 are deemed to be comparable in job and salary level to certain positions in the service of San Luis Obispo County. The following table sets forth the court classifications with the comparable county classifications shown opposite thereto:

Court Classification	County Classification
Court Executive Officer	Deputy County Counsel IV (Confidential)
Assistant Clerk Administrator	Deputy County Clerk Recorder
Calendar Coordinator—1/2 time	Supervising Superior Court Clerk
Municipal Court Clerks I, II	Superior Court Clerks I, II
Municipal Court Clerk Trainee	Legal Process Clerk I
Municipal Court Accounting Technician	Accounting Technician
Municipal Court Account Clerk	Account Clerk
Accountant I, II	Accountant I, II
Municipal Court Legal Process Clerk	Legal Process Clerk Trainee
Municipal Court Legal Process Clerks I, II, III	Legal Process Clerks I, II, III

Municipal Court Legal Process Clerk III—1/2 time	Legal Process Clerk III
Supervising Municipal Court Clerk	Supervising Superior Court Clerk
Administrative Services Officer I	Administrative Services Officer I
Court Data Manager	Senior Programmer Analyst
Mail Clerk	Mail Clerk

In the event that the salary for any classification which is shown above is increased by the board of supervisors, a commensurate increase shall be made in the salary for the comparable court classification. Salary adjustments made pursuant to this section shall be effective the same date as the effective date of action of the board of supervisors applicable to the respective and comparable county classifications, but shall remain effective only until January 1 of the second year following the year in which such an adjustment in salary is made.

(b) Upon recommendation of the judges of the court, and with the approval of the board of supervisors, the court may appoint additional employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Any appointment made pursuant to this section shall be on an interim basis and shall expire January 1st of the second calendar year following the year in which the appointment is made unless ratified by the Legislature. This section shall not affect the application of Section 72150.

SEC. 46. Section 74642 of the Government Code is amended to read:

74642. Within the Santa Barbara Judicial District there shall be the following officers, attachés, and employees:

	Santa Barbara Municipal Court	Salary Range
2	Account Clerk II	347
1	Account Clerk III	374
1	Accounting Technician I	398
1	Administrative Secretary	391
1	Assistant Clerk-Admin. Officer (SB)	505
1	Calendar Coordinator, Municipal Court	432
1	Clerk-Administrative Officer SB	555
2	Commisioner, Municipal Court	$2,809
3	Official Court Reporter-Municipal Court	495
1	Data Entry Operator	355
16	Court Clerk I	342
16	Court Clerk II	369
11	Court Clerk III	396
2	Court Interpreter	399

1	Administrative Assistant I/II	412/436
6	Court Clerk I - D	342
1	Court Clerk II - H	369
1	Court Clerk III - D	396
5	Legal Process Specialist, Supervising	432
1	Court Clerk Chief	476
1	Court Clerk, Supervising	432
4	Own Recognizance Officer	447
1	Own Recognizance Supervisor	467

	Marshal Santa Barbara Municipal Court	Salary Range
1	Clerk Principal	412
3	Court Clerk I	342
1	Court Clerk II	369
7	Deputy Marshal	458
1	Marshal (SB)	533
2	Marshal's Sergeant	493

SEC. 47. Section 74643 of the Government Code is amended to read:

74643. Within the Santa Maria Judicial District there shall be the following officers, attachés, and employees:

	Santa Maria Municipal Court	Salary Range
1	Account Clerk II	347
1	Account Clerk III	374
1	Asst. Clerk-Administrative Officer (SM)	451
1	Clerk Typist III	364
1	Clerk-Administrative Officer (SM)	508
1	Commissioner, Municipal Court	$2,809
9	Court Clerk I	342
6	Court Clerk II	369
4	Court Clerk III	396
3	Legal Process Specialist, Supervising	432
1	Court Interpreter	399
3	Data Entry Operator	355
1	Data Entry Operator (SR)	368
2	Own Recognizance Officer	447
1	Own Recognizance Supervisor	467
1	Clerk Typist II	337

Marshal—Santa Maria Municipal Court		Salary Range
1	Account Clerk II	347
1	Account Clerk III	374
1	Assistant Marshal (SM)	498
1	Court Clerk I	342
6	Deputy Marshal	458
1	Legal Services Specialist	389
1	Marshal (SM)	523
1	Marshal's Sergeant	493

SEC. 48. Section 74644 of the Government Code is amended to read:

74644. Within the Lompoc Judicial District there shall be the following officers, attachés, and employees:

Municipal Court—Lompoc		Salary Range
1	Asst. Clerk-Admin. Officer (Lompoc)	435
1	Clerk-Administrative Officer (Lompoc)	486
1	Court Clerk I	342
4	Court Clerk II	369
1	Court Clerk III	396
2	Court Clerk II - D	369

Marshal—Lompoc Municipal Court		Salary Range
1	Administrative Services Clerk	391
1	Clerk Typist I/II - D	313/337
1	Deputy Marshal	458
1	Marshal—Lompoc	510

SEC. 49. Section 74645 of the Government Code is amended to read:

74645. (a) It is the purpose of this section to provide compensation for municipal court employees and officers which is comparable to that paid to county employees holding equal or comparable positions in the Santa Barbara classified service as such comparability is determined by the Santa Barbara County Board of Supervisors.

(b) Whenever reference to a numbered salary range is made in any section of this article, the schedule and the salary ordinance of the County of Santa Barbara in effect on January 1, 1990, shall apply.

(c) If the board of supervisors adopts a revised salary schedule for county employees, the new schedule shall apply equally to employees of municipal courts and marshals' offices and conversion to the new schedule shall be made for such employees in the same manner on the same date as for the classified service.

(d) Notwithstanding any of the provisions of this article, the salary and benefits of municipal court employees and officers shall be changed in the same manner and at the same rate as a salary and benefit change is effective for other permanent county classified positions. Employees and officers of the municipal court shall be entitled to all employee benefits as they are provided and made applicable to positions within the classified service pursuant to Santa Barbara County ordinances or resolutions, to the extent that the benefits are not contrary to state law.

(e) All matters affecting the administration of salary and benefits, the selection, appointment, and reclassification of such municipal court officers and employees in those positions which they hold which are not specifically determined by the provision of state law shall be governed by the personnel ordinances and resolutions of the Board of Supervisors of the County of Santa Barbara.

(f) Nothing in this article shall be construed to place marshals' or clerks' offices, their employees and attachés under the civil service system of Santa Barbara County but such employees and attachés may be placed under that civil service system by court rule adopted by the judges of their respective courts.

(g) Any changes in compensation made pursuant to this section shall be on an interim basis and shall expire January 1 of the second calendar year following such changes unless ratified by the Legislature.

SEC. 50. Section 74647 of the Government Code is amended to read:

74647. (a) The judges of the Santa Barbara Judicial District may appoint two court commissioners. The judges of the Santa Maria Judicial District may appoint one court commissioner.

(b) Commissioners shall be appointed by a majority of the judges of the court or courts, or by the senior judge of a two-judge court, to which the court commissioner is appointed. Commissioners shall serve at the pleasure of the majority of the judges in the court or courts or at the pleasure of the presiding judges in the court or courts or at the pleasure of the senior judge in a two-judge court and may be removed by a majority of the judges at their discretion. Within the jurisdiction of the court or courts and under the direction of the judges, commissioners shall exercise all the powers and perform all of the duties authorized by law to be performed by commissioners of superior courts and any additional powers and duties as may be prescribed by law. At the direction of the judges, commissioners may have the same jurisdiction and exercise the same powers and duties as the judges of the court with respect to any infraction or small claims action. The commissioners shall possess the same qualifications the law requires of a municipal court judge and shall not engage in the private practice of law. They shall be ex officio deputy clerks. Commissioners shall receive a salary equal to 85 percent of the salary paid to municipal court judges in Santa Barbara County.

(c) Full-time official reporters appointed by the majority of the judges of the municipal court pursuant to the provisions of Section 72194 and so designated, shall be attachés of the court and shall receive a biweekly salary in accordance with the provisions of Section 70059.7. Such salary shall be paid at the same times and according to the same procedures as salaries of employees of the County of Santa Barbara. During the hours when the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

(d) The judges of the court may appoint as many part-time additional reporters as the business of the court requires. The additional reporters shall be known as official reporters pro tempore, and they shall serve without salary but shall receive, for reporting, fees at the per diem rate fixed by Section 70059.7. Rates of compensation of regular official reporters and official reporters pro tempore may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court, provided, however, that any changes in compensation which are made pursuant to this section shall be on an interim basis and shall remain in effect only until January 1, 1991, unless ratified by statute by the Legislature prior to that date. In criminal cases such fees upon order of the court shall be a charge against the general fund of the county.

(e) An official reporter when not engaged in the performance of duties of the municipal court, may be appointed to serve as such reporter for the Santa Barbara County Grand Jury or in any other court in the County of Santa Barbara.

SEC. 51. Section 74663 of the Government Code is amended to read:

74663. In the Santa Clara County Judicial District there shall be one clerk-administrative officer who shall receive a salary of three thousand thirty-four dollars and twenty-four cents ($3,034.24) biweekly and shall, notwithstanding Section 74666, be appointed by and serve at the pleasure of a majority of the judges of the municipal court. In addition, there will be one legal aide (unclassified) and one staff attorney (unclassified) who shall serve a one-year term. The legal aide shall be appointed by and serve at the pleasure of a majority of the judges and shall receive a salary as specified in range 42.8B and the staff attorney shall receive a salary as specified in range 27.5I of the Santa Clara County Salary Ordinance No. NS-5.89, as amended, for the fiscal year July 1, 1989, through June 30, 1990.

The clerk-administrative officer may appoint all of the following:

(1) One assistant clerk-administrative officer who shall receive a salary of two thousand three hundred seventy-six dollars and forty-eight cents ($2,376.48) biweekly.

(2) One administrative assistant to the clerk-administrative officer who shall receive a salary as specified in range 36.4A.

(3) One administrative assistant to the presiding judge who shall

receive a salary as specified in range 36.4A.

(4) One administrative services manager II who shall receive a salary as specified in range 37.6A.

(5) One senior management analyst who shall receive a salary as specified in range 35.6A, or management analyst who shall receive a salary as specified in range 33.1A, or associate management analyst B who shall receive a salary as specified in range 29.6A, or associate management analyst A who shall receive a salary as specified in range 25.7A, or management aide who shall receive a salary as specified in range 23.2A.

(6) Two management analyst who shall receive a salary as specified in range 33.1A, or associate management analyst B who shall receive a salary as specified in range 29.6A, or associate management analyst A who shall receive a salary as specified in range 25.7A.

(7) One associate management analyst B who shall receive a salary as specified in range 29.6A, or associate management analyst A who shall receive a salary as specified in range 25.7A, or management aide who shall receive a salary as specified in range 23.2A.

(8) One department information systems coordinator who shall receive a salary as specified in range 35.6A.

(9) One departmental systems specialist I who shall receive a salary as specified in range 35.6A.

(10) Two accountants III who shall receive a salary as specified in range 33.1A, or accountants II who shall receive a salary as specified in range 46.6B, or accountant/auditor appraiser who shall receive a salary as specified in range 43.0B.

(11) One accountant II who shall receive a salary as specified in range 46.6B, or accountant/auditor appraiser who shall receive a salary as specified in range 43.0B.

(12) One office management coordinator who shall receive a salary as specified in range 26.8A.

(13) Two secretaries III who shall receive a salary as specified in range 43.4B, or secretaries II who shall receive a salary as specified in range 41.4B, or secretaries I who shall receive a salary as specified in range 38.5B.

(14) Two secretaries II who shall receive a salary as specified in range 41.4B, or secretaries I who shall receive a salary as specified in range 38.5B.

(15) One secretary I who shall receive a salary as specified in range 38.4B.

(16) Two advanced clerk typists who shall receive a salary as specified in range 37.5B.

(17) One clerk typist who shall receive a salary as specified in range 36.5B.

(18) One account clerk II who shall receive a salary as specified in range 38.4B.

(19) One municipal court division manager III who shall receive

a salary of two thousand seventy-three dollars and twenty cents ($2,073.20) biweekly.

(20) Three municipal court division managers II who shall receive a salary of one thousand nine hundred seven dollars and sixty-eight cents ($1,907.68) biweekly.

(21) Three municipal court division managers I who shall receive a salary of one thousand seven hundred ninety dollars and eight cents ($1,790.68) biweekly.

(22) One chief deputy court clerk II who shall receive a salary as specified in range 33.2A.

(23) Six chief deputy court clerks I who shall receive a salary as specified in range 32.2A.

(24) Twelve supervising deputy court clerks II who shall receive a salary as specified in range 30.2A.

(25) Five supervising deputy court clerks I who shall receive a salary as specified in range 27.2A.

(26) Thirteen assistant supervising deputy court clerks who shall receive a salary as specified in range 24.5A.

(27) Sixty-six municipal courtroom clerks who shall receive a salary as specified in range 44.4B.

(28) Two hundred seven deputy court clerks II who shall receive a salary as specified in range 38.4B, or deputy court clerks I who shall receive a salary as specified in range 35.9B.

(29) One coordinating court interpreter who shall receive a salary as specified in range 26.7A.

(30) One court interpreter who shall receive a salary as specified in range 40.4b.

(31) Seven accountant assistants who shall receive a salary as specified in range 40.1B.

(32) One senior data entry operator who shall receive a salary as specified in range 39.2B.

(33) Thirteen data entry operators who shall receive a salary as specified in range 37.5B.

(34) Two security guards who shall receive a salary as specified in range 37.7B.

(35) One stock clerk who shall receive a salary as specified in range 36.5B.

(36) One messenger-driver who shall receive a salary as specified in range 34.9B.

SEC. 52. Section 74665 of the Government Code is amended to read:

74665. In the Santa Clara County Judicial District the judges of these courts, pursuant to Section 72194, may appoint as many additional reporters as the business of the courts may require, who shall be known as official reporters pro tempore, and who shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in those sections for reporting testimony and proceedings, the official reporters pro tempore shall in all cases receive ninety-three dollars

and three cents ($93.03) per half day and one hundred eighty-six dollars and six cents ($186.06) per day, which shall, upon order of the court, be a charge against the general fund of the county. If the board of supervisors increases the per diem fees for official court reporters pro tempore in the superior court pursuant to Section 70046.1, this increase shall apply equally for all official reporters pro tempore in the municipal courts, but all of these increases shall be effective only until the second year following the calendar year in which the adjustment is made.

SEC. 53. Section 74745 of the Government Code is amended to read:

74745. The court administrator may appoint with the approval of the judges:

(a) One assistant court administrator. The assistant court administrator shall serve as the assistant clerk of the court and shall receive a biweekly salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) One deputy clerk-administrative services manager I, II, or III, as the case may be. A deputy clerk-administrative services manager I shall receive a biweekly salary at a rate equal to that specified for administrative services manager I in the classified service of the County of San Diego. A deputy clerk-administrative services manager II shall receive a biweekly salary at a rate equal to that specified for administrative services manager II in the classified service of the County of San Diego. A deputy clerk-administrative services manager III shall receive a biweekly salary at a rate equal to that specified for administrative services manager III in the classified service of the County of San Diego.

(c) One deputy clerk-administrative assistant trainee, I, II, or III as the case may be. A deputy clerk-administrative assistant trainee shall receive a biweekly salary at a rate equal to that specified for administrative trainee in the classified service of the County of San Diego. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego.

(d) One deputy clerk-division manager III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II in the South Bay Judicial District.

(e) Two deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V in the San Diego Judicial District.

(f) One deputy clerk-assistant, associate, or senior accountant, as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego.

(g) One deputy clerk-staff development specialist who shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego.

(h) Nine deputy clerks IV. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III.

(i) Fifty-three deputy clerks III, II, or I, or deputy clerk-intermediate clerk typists, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I classification may be at any step within the salary range. Up to three of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego.

(j) Three deputy clerk-data entry operators, each of whom shall receive a biweekly salary at a rate equal to that specified for data entry operator in the classified service of the County of San Diego.

(k) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative

secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(*l*) Four deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk-interpreter in the superior court service of the County of San Diego.

(m) Notwithstanding subdivision (b) of Section 74749, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 74740 to 74750, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the classified service of the County of San Diego to which the pending class shall be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(n) Notwithstanding subdivision (b) of Section 74749, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(o) Notwithstanding subdivision (c) of Section 74749, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(p) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 74744.

(q) Four deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(r) Four deputy clerks V, each of whom shall receive a biweekly salary equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities. Notwithstanding subdivision (b) of Section 74749, persons who hold the position of senior deputy clerk on January 1, 1991, may be appointed by the court administrator to the position of deputy clerk V without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(s) One deputy clerk-municipal court secretary, who shall receive a salary at a rate equal to that specified for criminal legal secretary

III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range. Notwithstanding subdivision (b) of Section 74749, persons who hold the position of deputy clerk-administrative secretary IV on January 1, 1991, may be appointed by the court administrator to the position of deputy clerk-municipal court secretary without further examination subject to certification by the court administrator that the person possesses the minimum qualifications and necessary skills to perform the duties of the position.

(t) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (m), inclusive, (o), (q), (r), and (s) of this section may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which the resolution is adopted, unless earlier ratified by the Legislature.

SEC. 54. Section 74783 of the Government Code is amended to read:

74783. There shall be one clerk-administrator who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The clerk-administrator and all other court employees shall receive the salary specified in the salary resolution for Stanislaus County which is in effect. The clerk may appoint, with the approval of the judges of the court, all of the following:

(a) One assistant clerk-administrator.
(b) Ten courtroom clerks.
(c) One supervising legal clerk I.
(d) One accounting technician.
(e) Thirteen legal clerks III.
(f) One account clerk III.
(g) One department head secretary supervising legal stenographer.
(h) Thirty-nine legal clerks I/II.
(i) One supervising courtroom clerk.
(j) Four supervising legal clerks II.
(k) Four interpreters.
(*l*) Four municipal court reporters.
(m) One clerical division supervisor.

(n) One master calendar clerk.

SEC. 55. Section 74784 of the Government Code is amended to read:

74784. There shall be one marshal who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The Marshal and all other marshal employees shall receive the salary specified in the salary resolution for Stanislaus County which is in effect. The marshal may appoint, with the approval of the judges of the court all of the following:

(a) Two marshal-captains.

(b) Eighteen deputy marshals.

(c) One supervising civil process technician.

(d) One civil process technician.

(e) Three civil process clerks.

(f) Three marshal technicians.

(g) The number of deputy marshal-keepers as may be required by law.

SEC. 56. Section 74792 is added to the Government Code, to read:

74792. In the event the Board of Supervisors of the County of Stanislaus amends the resolution establishing salary ranges and salary rates for the personnel of the County of Stanislaus or adopts a new resolution which provides for a change in compensation for ranges or steps, such changes shall be effective for the municipal court employees under this article on the effective date of the action of the board of supervisors, or the effective date of this section, whichever is earlier, but all such changes shall be effective only until the second year following the calendar year in which the change is made.

SEC. 57. Section 74841.5 is added to the Government Code, to read:

74841.5. So long as Solano County continues to receive block grant funding pursuant to the Brown-Presley Trial Court Funding Act, there is one traffic trial commissioner, who shall be appointed by the presiding judge with concurrence of the judges of the court, and shall hold office at the pleasure of the judges.

The qualifications, powers and duties, and compensation of the commissioner shall be determined pursuant to Article 10 (commencing with Section 72450) of Chapter 9 of this title.

The traffic trial commissioner position shall not be counted in the calculation of trial court funding pursuant to Section 77202, and the salary for this position shall not be considered as a part of court operations for Solano County for purposes of Sections 77003 and 77204.

SEC. 58. Section 74842 of the Government Code is amended to read:

74842. There is one clerk/administrator, who shall be appointed by the presiding judge with concurrence of a majority of the judges of the court, and shall hold office at the pleasure of a majority of the judges. The clerk/administrator shall administer the nonjudicial activities of the court and serve as jury commissioner, exercising

insofar as applicable to the municipal court, the powers of a jury commissioner of a superior court.

The clerk/administrator shall receive compensation at the classification and salary grade indicated:

Number		Classification	Salary Grade
(a)	1	Muni Court Executive Officer	65-00400

The position shall be entitled to the same benefits and privileges respecting retirement, vacation, sick leave, insurance, administrative leave, and expense account which are provided other management employees of the county.

SEC. 59. Section 74843 of the Government Code is amended to read:

74843. The clerk/administrator may appoint the following numbers of staff at the classifications and salary grades indicated:

Number		Classification	Salary Grade
(a)	1	Assistant Municipal Court Executive Officer	70-00400
(b)	1	Principal Court Clerk	08-01600
(c)	1	Administrative Assistant (C)	30-01000
(d)	1	Administrative Services Clerk II	09-03600
(e)	1	Supervising Courtroom Clerk	08-01580
(f)	3	Supervising Legal Procedures Clerk	08-01200
(g)	1	Fiscal Records Supervisor	08-01900
(h)	4	Courtroom Clerks	09-03400
(i)	2	Lead Legal Procedures Clerk	09-02800
(j)	1	Lead Fiscal Clerk	09-03300
(k)	4	Fiscal Clerk/Clerk Trainee	09-02400
(*l*)	15	Legal Procedures Clerk/ Trainees	09-01800
(m)	0.5	Financial Interviewer	07-00900

However, the position set forth in subdivision (m) shall only be filled if the positions specified in Section 74843.5 are not funded.

SEC. 60. Section 74843.5 is added to the Government Code, to read:

74843.5. So long as Solano County continues to receive block grant funding pursuant to the Brown-Presley Trial Court Funding Act, the clerk/administrator may appoint the following numbers of staff at the classification and salary grades indicated:

Number		Classification	Salary Grade
(a)	1	Courtroom Clerk	09-03400
(b)	2	Fiscal Clerks	09-02400
(c)	2	Legal Procedures Clerks	09-01800
(d)	1	Clerk	09-00600
(e)	1	Data Systems Coordinator	75-01400

SEC. 61. Section 74845.2 is added to the Government Code, to read:

74845.2. So long as Solano County continues to receive block grant funding pursuant to the Brown-Presley Trial Court Funding Act, the marshal may appoint the following numbers of staff at the classification and salary grade indicated:

Number		Classification	Salary Grade
(a)	1	Deputy Marshal or Deputy Marshal Trainee	03-00300

SEC. 62. Section 74846 of the Government Code is amended to read:

74846. Whenever a reference to a salary grade number is made in this article, the schedules found in the Memoranda of Understanding adopted by the Board of Supervisors of the County of Solano and effective on January 1, 1991, shall apply. Any schedule and listing shall remain effective only until January 1 of the second year following the calendar year in which the change is made.

SEC. 63. Section 74851 of the Government Code is amended to read:

74851. (a) Regular official court reporters shall report all criminal and civil proceedings in their respective courts. When not engaged in the performance of other duties imposed by law, each reporter shall render such assistance as may be required in any other court of the county to which he or she may be assigned, and peform such other verbatim reporting services as may be required such as, but not limited to, board of equalization hearings, public hearings, and depositions. During hours in which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of regular duties and shall not engage in any other employment in their professional capacity.

(b) Each regular official court reporter shall receive compensation at the classification and salary grade indicated:

Number	Classification	Salary Grade
(1)	Court Reporter	09-04100

(c) For all transcripts incident to reporting services, each reporter shall receive the fees provided for in Article 9 (commencing with Section 69941) of Chapter 5 of this title. The initial hiring rate for each position shall be step 1, provided that the judges may appoint any such reporter at a higher initial step if, in the opinion of the majority of judges, an individual to be appointed has such experience and qualifications as to entitle him or her to such higher initial step.

(d) A regular official court reporter shall serve at the pleasure of the appointing judge, but shall be entitled to the same benefits and privileges respecting longevity, service credits, cost-of-living or other general pay increases, retirement, vacation, sick leave, and group insurance which are provided other employees of the county. Court reporters shall be entitled to any increases provided other employees of the county respecting longevity, service credits, cost-of-living or general pay increases, retirement, vacation, sick leave, and group insurance, but such increases shall be on an interim basis and remain in effect only until January 1, 1993, unless ratified by statute by the Legislature prior to that date.

(e) Judges of the court may appoint as many official reporters pro tempore as the business of the court requires. They shall be unsalaried but shall receive the fees provided by Article 9 (commencing with Section 69941) of Chapter 5 of this title, which fees, upon order of the court, shall be a proper charge against the general fund of the county.

(f) (1) A reporter's filing fee of sixteen dollars ($16) shall be paid in actions and proceedings as specified in Section 68090.5.

(2) In addition to any fee otherwise required in civil cases that last longer than five judicial days, a fee per day equal to the per diem rate for official reporters pro tempore shall be charged to the parties for the services of an official reporter for the sixth and each successive day a reporter is required.

(3) In addition to any fee otherwise required in a civil case in which the court orders a daily transcript necessitating the services of two phonographic reporters, the party requesting the daily transcript shall pay a fee per day equal to the per diem rate for official reports pro tempore for the services of the second reporter for the first and each successive day.

SEC. 64. Section 74949.1 of the Government Code is amended to read:

74949.1. (a) The judges of the Napa Municipal Court may appoint one full-time commissioner who shall hold office at the pleasure of the judges making the appointment, and shall possess the same qualifications as are required of the judge of a municipal court. Within the jurisdiction of the court, and to the extent the judges so

direct, the commissioner shall exercise the same powers and duties as a judge of the municipal court with respect to any infraction or small claims action, and shall exercise all other powers and perform all other duties of a municipal court commissioner that may be prescribed by law. In addition, and notwithstanding the provisions of Section 72400, the commissioner shall act as a traffic referee and shall have the powers and duties specified in Article 9 (commencing with Section 72400) of Chapter 8.

(b) The commissioner shall receive a monthly salary at a rate equal to 78 percent of the salary of a municipal court judge. In addition to the monthly salary, the commissioner shall be entitled to and shall receive fringe benefits on the same basis as any employee of the municipal court, other than the clerk of the municipal court, who works an equivalent number of hours. The commissioner shall observe the same holidays as other court employees. The commissioner shall not engage in the private practice of the law.

(c) The court shall periodically review the performance of the commissioner and shall maintain an ongoing training program to maintain his or her skills. The commissioner shall have completed, prior to his or her appointment, an orientation program satisfactory to the presiding judge, including a review of the procedures and practices of the court, together with observation of each calendar to which the commissioner may be assigned. The commissioner shall serve on the bench full-time as assigned, and the presiding judge shall ensure that the commissioner maintains current knowledge of the court's personnel and procedures.

The additional .5 commissioner position authorized by amendments to this section enacted during the 1990 portion of the 1989–90 Regular Session shall not be counted in the calculation of trial court funding pursuant to Section 77202, and the salary for that portion of this position shall not be considered as a part of court operations for Napa County for purposes of Sections 77003 and 77204. However, trial court funding for the part-time .5 commissioner position previously authorized by this section shall not be affected.

SEC. 65. Section 74956 of the Government Code is amended to read:

74956. (a) There shall also be the following court employee positions, whose numbers and salary range on the standard salary schedule of the County of Napa shall be as specified:

Position title	Number of positions	Salary range
Assistant clerk of the court	1	D-048
Supervising legal clerk	2	B-064
Municipal court clerk	3	A-140
Municipal court clerk (LT)	1	A-140
Legal clerk II	9	A-105
Legal clerk II (LT)	1	A-105

Legal clerk interpreter—B	1	A-129
Legal clerk I	3	A-092
Senior account clerk	1	A-129
Account clerk I (LT)	1	A-089
Office assistant II	2	A-087
Office assistant II (LT)	1	A-087
Data control clerk	1	A-121
Court commissioner	1	*

* As specified in Section 74949.1

(b) Each such person employed on the effective date of this article in the office of the clerk of the municipal court shall receive credit for prior continuous service in the office, including service in a court superseded upon establishment of the municipal court.

(c) With the approval of the board of supervisors, a majority of the municipal court judges may establish additional positions for officers, attachés, and employees in addition to those provided by subdivision (a). The order and approval establishing any such position shall designate the position title and salary range. Such appointments shall be on an interim basis and shall expire January 1 of the second year following the calendar year in which such appointments are made unless ratified by the Legislature.

SEC. 66. Section 74963 of the Government Code is amended to read:

74963. There shall be one municipal court clerk administrator who shall be appointed by, and who shall serve at the pleasure of a majority of the judges of the municipal court. The municipal court clerk-administrator shall receive a monthly salary at a rate specified in range 30.41.

SEC. 67. Section 74965 of the Government Code is amended to read:

74965. The municipal court clerk-administrator may appoint:

(a) Four municipal court supervisors II, who shall receive a monthly salary at a rate specified in range 20.48, or four municipal court supervisors I, who shall receive a monthly salary at a rate specified in range 19.31, or any combination thereof not exceeding a total of four positions.

(b) Thirty-one municipal court senior clerks, who shall receive a monthly salary at a rate specified in range 17.55, or thirty-one municipal courtroom clerks II, each of whom shall receive a monthly salary at a rate specified in range 16.55, or thirty-one municipal courtroom clerks I, each of whom shall receive a monthly salary at a rate specified in range 15.61, or thirty-one legal process clerks IV, each of whom shall receive a monthly salary at a rate specified in range 14.73, or thirty-one legal process clerks III, each of whom shall receive a monthly salary at a rate specified in range 13.89, or thirty-one legal process clerks II, each of whom shall receive a monthly salary at a rate specified in range 13.10, or thirty-one legal process clerks I, each of whom shall receive a monthly salary at a rate

specified in range 12.36, or any combination thereof not exceeding a total of thirty-one positions, of which one shall be part-time not to exceed 20 hours per week.

(c) Four municipal court fiscal clerks, who shall receive a monthly salary at a rate specified in range 13.50, or four account clerks II, each of whom shall receive a monthly salary at a rate specified in range 11.94, or any combination thereof not exceeding a total of four positions.

(d) One administrative assistant, who shall receive a monthly salary at a rate specified in range 17.06.

SEC. 68. Section 74966 of the Government Code is repealed.

SEC. 69. Section 74968 of the Government Code is repealed.

SEC. 70. Section 74969 of the Government Code is amended to read:

74969. Whenever reference to a numbered salary range is made in any section of this article, the schedule of monthly salaries found in the salary resolution of the County of Yolo in effect on January 1, 1990, shall apply.

SEC. 71. Section 74970 of the Government Code is amended to read:

74970. Except as otherwise provided by law, all officers and employees of the Yolo County Municipal Court shall be entitled to the same provisions with respect to retirement, vacations, and other benefits allowed to employees of the county, and be subject to the personnel regulations, memoranda of understanding, management benefit package, and the affirmative action plan of the County of Yolo as they exist on January 1, 1990.

SEC. 72. Section 74971 of the Government Code is amended to read:

74971. The positions enumerated in Sections 74963 to 74965, inclusive, are deemed to be comparable in job and salary level to certain positions in the service of Yolo County. The following table sets forth the court classifications with the comparable county classifications shown opposite thereto:

Clerk Classification	County Classification
Municipal court clerk administrator	Municipal court clerk administrator
Municipal court supervisor II	Municipal court supervisor II
Municipal court supervisor I	Municipal court supervisor I
Municipal court senior clerk	Municipal court senior clerk
Legal process clerk IV	Legal process clerk IV
Legal process clerk III	Legal process clerk III
Legal process clerk II	Legal process clerk II

Legal process clerk I	Legal process clerk I
Municipal court fiscal clerk	Municipal court fiscal clerk
Account clerk II	Account clerk II
administrative assistant	administrative assistant

In the event that any classification, the number of positions prescribed for any classification, or the salary, benefits, personnel regulations, memorandum of understanding or affirmative action plan for any classification which is shown above is modified by the board of supervisors, a commensurate modification shall be made for the comparable court classifications. Any adjustment made pursuant to this section shall be effective the same date as the effective date of the action applicable to the respective and comparable county classifications, but shall remain in effect only until January 1 of the second year following the year in which such change is made, unless subsequently ratified by the Legislature.

SEC. 73. The Legislature declares that it and Napa County have jointly agreed that the .5 portion of a court commissioner position established by this act shall be funded by Napa County solely out of county funds.

SEC. 74. The Legislature declares that it and Riverside County have jointly agreed that the court commissioner positions established by this act shall be funded by Riverside County solely out of county funds.

SEC. 75. The Legislature declares that it and Solano County have jointly agreed that the traffic trial commissioner positions established by this act shall be funded by Solano County solely out of county funds.

SEC. 76. Section 8.5 of this act shall not become operative if Assembly Bill 1172 is enacted and Assembly Bill 1172 repeals and adds Article 3 (commencing with Section 73390) of, and adds Article 3.1 (commencing with Section 73400) to, Chapter 10 of Title 8 of the Government Code.

SEC. 77. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1586

An act to amend Sections 11017 and 11268 of, to add Article 2.5 (commencing with Section 11275) to Chapter 2 of Part 3 of Division 9 of, and to repeal Section 11051 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 11017 of the Welfare and Institutions Code is amended to read:

11017. In computing and paying assistance under this part, the need and income amounts used shall be rounded to the next lower whole dollar when the result of determining the standard of need or the payment amount includes an amount which is not a whole dollar.

SEC. 1.5. Section 11051 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 11268 of the Welfare and Institutions Code is amended to read:

11268. (a) Each applicant for or recipient of aid shall be required as a condition of eligibility, to furnish the applicant's social security account number (or numbers, if the applicant has more than one social security account number) or submit verification of application for a social security account number.

(b) (1) If the applicant or recipient cannot complete the application for a social security account number because the necessary documentation is not immediately available, the county shall determine if good cause exists.

(2) For purposes of this section, "good cause" includes situations in which the necessary documentation for the application for a social security account number is not immediately available at the time of application.

(c) (1) If good cause exists, and the applicant or recipient is otherwise eligible, the applicant or recipient is eligible for assistance pursuant to this section for the maximum period permitted by federal law, while he or she attempts to obtain the necessary documents to complete the application.

(2) The federal time period shall apply to all recipients of aid, whether or not federal financial assistance is available.

(3) The county shall make every effort to assist the individual in obtaining the documents required by this section.

(d) The department shall adopt regulations in accord with federal law regarding applications for the social security account number and the definition of good cause.

(e) The county shall utilize the social security account numbers in the administration of aid.

SEC. 3. Article 2.5 (commencing with Section 11275) is added to Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 2.5. Needy Families' Paperwork Reduction Act of 1990

11275. (a) Only verification of information necessary to determine past or present eligibility for or the computation of or delivery of aid shall be requested from an applicant for or recipient of aid under this chapter. Additional information necessary for the administration of the AFDC program may be requested, but the individual's eligibility for aid shall not be delayed, denied, or terminated due to his or her inability to provide this information.

(b) Within 10 days from the date of application, the county shall identify and provide written notice of documents and alternative documents, if applicable, that may be submitted to verify eligibility.

11275.05. (a) Whenever a former recipient of aid applies for aid before the expiration of one year from the effective date of discontinuance, the county shall examine the existing case file to determine if the necessary verification is in the possession of the county if any of the following criteria is present:

(1) The applicant does not have easy access to the verification.

(2) There is a cost associated with obtaining the verification.

(3) The time needed to obtain the verification would delay the application.

(b) The county shall not be required to examine the existing case file if it would be unreasonable to expect the file to contain the needed verification because the circumstance for which the verification is needed did not exist during the period the applicant previously received aid.

(c) Notwithstanding the provisions of subdivision (a), whenever a former recipient of aid applies for aid within the calendar month following the effective date of a discontinuance, a county shall not require the former recipient to furnish any documentation previously provided to the county unless the documentation is absent from the existing file and the documentation affects eligibility or the amount of aid.

(d) The retrieval and examination of the file shall be conducted in a timely manner to ensure the prompt determination of eligibility for aid.

(e) At the time an applicant described in subdivisions (a) and (c) is requested to obtain and submit to the county verification of eligibility, the county shall inform the applicant, in writing, of the requirements of this section.

11275.10. (a) When an applicant or recipient establishes that he or she has made a good faith effort to obtain information or verification from a third party, including any other public agency, and the third party fails or refuses to provide the information or verification or seeks to impose a charge or fee for providing the

information to the applicant or recipient, the county shall assist the applicant or recipient in obtaining the information or verification from the third party, and when necessary, shall obtain the document.

(b) If it is necessary to pay a fee imposed by a third party to obtain the information or verification, the county shall pay that fee on behalf of the applicant or recipient.

(c) If the county finds that he or she has not made a good faith effort to obtain the information or verification, it shall document its reasons for the finding in the client's file.

(d) Any notice requesting verification shall clearly inform applicants and recipients of the requirements of this section.

11275.15. No application for aid may be denied for failure to provide verification if the applicant is cooperating in obtaining the information requested, except as required by Section 11268.

11275.20. (a) If an applicant is denied assistance solely due to failure to provide verification of eligibility, but subsequently submits all required verifications within 30 days of the date of the denial notice, denial shall be rescinded, and if eligibility is approved, aid shall be granted based on the original application.

(b) The notice of denial of aid for failure to provide verification of eligibility shall advise the applicant of his or her right to have the denial rescinded if he or she meets the requirements of this subdivision.

11275.25. If any provision of this article is in conflict with any federal statute or regulation, it shall be inapplicable to the extent of the conflict, but the remainder of the article shall be unaffected to the extent that no conflict exists.

11275.30. (a) In the event of an initial determination by the Secretary of Health and Human Services that any provision of this section is in conflict with any federal statute or regulation, the department shall take all available and necessary steps to obtain a final determination reversing that decision.

(b) In the event of a final determination finding a conflict with federal law, the department shall immediately request the Attorney General to seek judicial review of the determination and shall immediately notify the appropriate policy and fiscal committees of both houses of the Legislature.

(c) (1) If federal funds are withheld based on a determination by the United States Department of Health and Human Services that any provision of this article conflicts with federal law, the department may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, if necessary to avoid withholding of federal reimbursement.

(2) The adoption of regulations for that purpose shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety.

(3) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

emergency regulations adopted by the department pursuant to this paragraph shall not be subject to the review and approval of the Office of Administrative Law, and shall become effective immediately upon filing with the Secretary of State.

(d) The department shall continue to implement provisions of this article which are unaffected by the determination.

11275.35. (a) If the determination that all or any provision of this article conflicts with federal law is reversed, the department shall reinstate the provision or provisions it had ceased implementing as a result of the withholding of funds, and may adopt emergency regulations for that purpose.

(b) The adoption of regulations for purposes of subdivision (a) shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the department pursuant to this section shall not be subject to the review and approval of the Office of Administrative Law, and shall become effective immediately upon filing with the Secretary of State.

11275.40. This article applies to all applicants for, and recipients of, aid under this chapter, regardless of whether federal financial participation is available for the family.

11275.45. (a) This article shall be applied prospectively only, and shall apply only with respect to applications for aid made on or after July 1, 1991.

(b) This section shall not prohibit a county welfare department from verifying information provided prior to July 1, 1991, in the administration of this article.

11275.50. The State Department of Social Services shall consult with the County Welfare Directors Association when developing state budget estimates on the administrative funds necessary to implement this article.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1587

An act to add Sections 66010.4, 66010.6, and 70900.5 to, and to repeal Sections 66500, 66608, and 66701 of, the Education Code, relating to education.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares as follows:

(a) The Legislature periodically undertakes to review public higher education in California. The Legislature's most recent review effort is in the process of being completed, subsequent to five years of examination of public higher education by the Commission for the Review of the Master Plan for Higher Education and the Joint Committee for Review of the Master Plan for Higher Education.

(b) Because higher education issues tend to be viewed in the narrow context of a specific situation in a single higher education segment, it is difficult to view public higher education in California as a single system, as under the Master Plan for Higher Education. It is the intent of this act to unify the philosophies and principles of the mission statements of the University of California, the California State University, the California Community Colleges, and the California Postsecondary Education Commission.

(c) Voluntary cooperation and participation among educational entities is laudable and desirable. The Legislature encourages public and private involvement in that process.

SEC. 2. Section 66010.4 is added to the Education Code, to read:

66010.4. The missions and functions of California's public and independent segments, and their respective institutions of higher education shall be differentiated as follows:

(a) (1) The California Community Colleges shall, as a primary mission, offer academic and vocational instruction at the lower division level for both younger and older students, including those persons returning to school. Public community colleges shall offer instruction through but not beyond the second year of college. These institutions may grant the associate in arts and the associate in science degree.

(2) In addition to the primary mission of academic and vocational instruction, the community colleges shall offer instruction and courses to achieve all of the following:

(A) The provision of remedial instruction for those in need of it and, in conjunction with the school districts, instruction in English as a second language, adult noncredit instruction, and support services which help students succeed at the postsecondary level are reaffirmed and supported as essential and important functions of the

community colleges.

(B) The provision of adult noncredit education curricula in areas defined as being in the state's interest is an essential and important function of the community colleges.

(C) The provision of community services courses and programs is an authorized function of the community colleges so long as their provision is compatible with an institution's ability to meet its obligations in its primary missions.

(3) The community colleges may conduct to the extent that state funding is provided, institutional research concerning student learning and retention as is needed to facilitate their educational missions.

(b) The California State University shall offer undergraduate and graduate instruction through the master's degree in the liberal arts and sciences and professional education, including teacher education. Presently established two-year programs in agriculture are authorized, but other two-year programs shall be permitted only when mutually agreed upon by the Trustees of the California State University and the Board of Governors of the California Community Colleges. The doctoral degree may be awarded jointly with the University of California, as provided in subdivision (c) and pursuant to Section 66904. The doctoral degree may also be awarded jointly with one or more independent institutions of higher education, provided that the proposed doctoral program is approved by the California Postsecondary Education Commission. Research, scholarship, and creative activity in support of its undergraduate and graduate instructional mission is authorized in the California State University and shall be supported by the state. The primary mission of the California State University is undergraduate and graduate instruction through the master's degree.

(c) The University of California may provide undergraduate and graduate instruction in the liberal arts and sciences and in the professions, including the teaching professions. It shall have exclusive jurisdiction in public higher education over instruction in the profession of law and over graduate instruction in the professions of medicine, dentistry, and veterinary medicine. It has the sole authority in public higher education to award the doctoral degree in all fields of learning, except that it may agree with the California State University to award joint doctoral degrees in selected fields. The University of California shall be the primary state-supported academic agency for research.

(d) The independent institutions of higher education shall provide undergraduate and graduate instruction and research in accordance with their respective missions.

SEC. 3. Section 66010.6 is added to the Education Code, to read:

66010.6. The missions of agencies charged with coordination, administration, or implementation of higher education policies and programs in California shall be as follows:

(a) The California Postsecondary Education Commission is the

instructor, as defined in Section 310.4, shall meet all of the following requirements:

(1) On and after July 1, 1973, have a high school education or its equivalent and have satisfactorily completed a course in the teaching of driver education and driver training acceptable to the department.

(2) Within three attempts, pass an examination that the department requires on traffic laws, safe driving practices, operation of motor vehicles, and teaching methods and techniques.

(3) Be physically able to safely operate a motor vehicle and to train others in the operation of motor vehicles.

(4) Hold a valid California driver's license in a class appropriate for the type of vehicle in which instruction will be given.

(5) Not be on probation to the department as a negligent operator.

(6) Have a driver record which does not have an outstanding notice for violating a written promise to appear in court or for willfully failing to pay a lawfully imposed fine, as provided in Section 40509.

(7) Be 18 years of age or older.

(b) The qualifying requirements referred to in this section shall be met within one year from the date of application for a license, or a new application, examination, and a fee shall be required.

SEC. 9. Section 11104.3 of the Vehicle Code is amended to read:

11104.3. (a) An all-terrain vehicle safety instructor shall meet all of the following requirements:

(1) Be a person who has not been convicted of a crime involving an act of dishonesty, fraud, or deceit with the intent to benefit himself or herself or another substantially, or to injure another substantially; or has not committed any act which, if done as an all-terrain vehicle safety instructor, would be grounds for the suspension or revocation of the all-terrain vehicle safety instructor's license. A conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this section.

(2) Have a high school education or its equivalent and have satisfactorily completed a course of instruction training in all-terrain vehicle safety as approved by the Off-Highway Vehicle Safety Education Committee.

(3) Within three attempts, pass the examination that the department requires on off-highway vehicle laws, safe driving practices, operation of all-terrain vehicles, and teaching methods and techniques.

(4) Be physically able to safely operate a motor vehicle and to train others in the operation of all-terrain vehicles.

(5) Hold a valid driver's license issued by this state or any contiguous state.

(6) Not be on probation to the department as a negligent operator or the equivalent of that in the state that issued the driver's license.

(7) Have a driver record which does not have an outstanding

CHAPTER 1588

An act to add Section 2241.5 to the Business and Professions Code, relating to physicians and surgeons.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 2241.5 is added to the Business and Professions Code, to read:

2241.5. (a) Notwithstanding any other provision of law, a physician and surgeon may prescribe or administer controlled substances to a person in the course of the physician and surgeon's treatment of that person for a diagnosed condition causing intractable pain.

(b) "Intractable pain," as used in this section, means a pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and surgeon and one or more physicians and surgeons specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain.

(c) No physician and surgeon shall be subject to disciplinary action by the board for prescribing or administering controlled substances in the course of treatment of a person for intractable pain.

(d) This section shall not apply to those persons being treated by the physician and surgeon for chemical dependency because of their use of drugs or controlled substances.

(e) This section shall not authorize a physician and surgeon to prescribe or administer controlled substances to a person the physician and surgeon knows to be using drugs or substances for nontherapeutic purposes.

(f) This section shall not affect the power of the board to deny, revoke, or suspend the license of any physician and surgeon who does any of the following:

(1) Prescribes or administers a controlled substance or treatment that is nontherapeutic in nature or nontherapeutic in the manner the controlled substance or treatment is administered or prescribed or is for a nontherapeutic purpose in a nontherapeutic manner.

(2) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Controlled Substances Act, or of controlled substances scheduled in, or pursuant to, the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by

the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal of or the dispensing of the drugs to the person and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(3) Writes false or fictitious prescriptions for controlled substances listed in the California Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(4) Prescribes, administers, or dispenses in a manner not consistent with public health and welfare controlled substances listed in the California Controlled Substance Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(5) Prescribes, administers, or dispenses in violation of either Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code or this chapter.

(g) This section shall not apply to treatment of any person in a health facility, as defined in Section 1250 of the Health and Safety Code.

SEC. 2. This act shall be known and cited as the Intractable Pain Treatment Act.

CHAPTER 1589

An act to amend Section 12102 of the Public Contract Code, relating to state contracts.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 12102 of the Public Contract Code is amended to read:

12102. The Department of Finance and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of electronic data processing and telecommunications goods and services. These policies and procedures shall, in accordance with the intent of the Legislature as expressed in Section 12101, provide for the following:

(a) Acquisition of electronic data processing and telecommunications goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in cases of emergency where

immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of electronic data processing and telecommunications goods and services. These guidelines may be in the form of standard formats or model formats.

(b) Contract awards shall be based on the following:

(1) The proposal which provides the most cost-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. These evaluation procedures may provide for the selection of a vendor on an objective basis other than cost alone.

(2) Whenever an acquisition under this section is based upon cost alone, so that the award of a contract, purchase order, or delegated purchase order is made to the lowest responsible bidder meeting the specifications, the 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(c) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for electronic data processing and telecommunications goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(d) Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of that authority. This authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.

(e) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

(f) Protest procedures shall be developed to provide bidders an opportunity to protest formally with respect to any acquisition conducted in accordance with this chapter. Authority to protest may be limited to participating bidders. The Director of General Services,

or a person designated by the director, may consider and decide on initial protests. A decision regarding an initial protest shall be final. If prior to making the award, any vendor who has submitted an offer files a protest with the department against the awarding of the contract or purchase order on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract or purchase order shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting vendor shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(g) Electronic data processing and telecommunications goods which have been determined to be surplus to state needs shall be disposed of in a manner which will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(h) A vendor may be excluded from bid processes if the vendor's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any vendor excluded in accordance with this section shall be reinstated as a qualified vendor at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the vendor's exclusion have been corrected.

SEC. 1.5. Section 12102 of the Public Contract Code is amended to read:

12102. The Department of Finance and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of electronic data processing and telecommunications goods and services. These policies and procedures shall, in accordance with the intent of the Legislature as expressed in Section 12101, provide for the following:

(a) Acquisition of electronic data processing and telecommunications goods and services shall be conducted through competitive means, except when the Director of General Services determines that either (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain in the State Administrative Manual appropriate criteria and procedures to ensure compliance with the intent of this chapter.

These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of electronic data processing and telecommunications goods and services. These guidelines may be in the form of standard formats or model formats.

(b) Contract awards shall be based on the following:

(1) The proposal which provides the most cost-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. These evaluation procedures may provide for the selection of a vendor on an objective basis other than cost alone.

(2) Whenever an acquisition under this section is based upon cost alone, so that the award of a contract, purchase order, or delegated purchase order is made to the lowest responsible bidder meeting the specifications, the 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(c) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for electronic data processing and telecommunications goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(d) Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of that authority. That authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.

In circumstances where the Department of General Services offers a telecommunications service in competition with other providers, the Department of General Services shall be treated the same as any competing provider. The Department of General Services shall develop a procedure by which all bids made by the Department of General Services, whether formal or informal, are evaluated on an equal basis, and under conditions which are fair and objective, with bids by other providers.

(e) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

(f) Protest procedures shall be developed to provide bidders an opportunity to protest formally with respect to any acquisition

conducted in accordance with this chapter. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, may consider and decide on initial protests. A decision regarding an initial protest shall be final. If prior to making the award, any vendor who has submitted an offer files a protest with the department against the awarding of the contract or purchase order on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract or purchase order shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting vendor shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(g) Electronic data processing and telecommunications goods which have been determined to be surplus to state needs shall be disposed of in a manner which will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(h) A vendor may be excluded from bid processes if the vendor's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any vendor excluded in accordance with this section shall be reinstated as a qualified vendor at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the vendor's exclusion have been corrected.

SEC. 2. The Legislature finds and declares that while the amendments to Section 12102 of the Public Contract Code contained in Section 1 of this act only restate the legislative intent of existing law, those amendments shall not apply to contracts executed prior to subdivision (c) of January 1, 1991.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 12102 of the Public Contract Code proposed by both this bill and AB 3316. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 12102 of the Public Contract Code, and (3) this bill is enacted after AB 3316, in which case Section 1 of this bill shall not become operative.

CHAPTER 1590

An act to add Section 3344.5 to the Civil Code, and to add Section 115.1 to the Penal Code, relating to campaign materials, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 3344.5 is added to the Civil Code, to read:

3344.5. (a) Any person whose signature is used in violation of, and any candidate for elective office whose election or defeat is expressly advocated in any campaign advertisement which violates, subdivision (b) of Section 115.1 of the Penal Code, shall have a civil cause of action against any person committing the violation.

(b) If a mass mailing or other printed matter which violates subdivision (b) of Section 115.1 of the Penal Code expressly advocates the election or defeat of more than one candidate only a person whose signature is used and the candidate or candidates to whom the unauthorized signature directly relates shall have a civil cause of action pursuant to this section.

(c) Any person bringing a cause of action pursuant to this section may recover damages in an amount of two times the cost of the communication, but not to exceed fifty thousand dollars ($50,000), with regard to which the unauthorized signature was used.

(d) As used in this section, "signature" means a handwritten or mechanical signature, or a copy thereof.

SEC. 2. Section 115.1 is added to the Penal Code, to read:

115.1. (a) The Legislature finds and declares that the voters of California are entitled to accurate representations in materials which are directed to them in efforts to influence how they vote.

(b) No person shall publish or cause to be published, with intent to deceive, any campaign advertisement containing a signature which the person knows to be unauthorized.

(c) For purposes of this section, "campaign advertisement" means any communication directed to voters by means of a mass mailing as defined in Section 82041.5 of the Government Code, a paid television, radio, or newspaper advertisement, an outdoor advertisement, or any other printed matter, if the expenditures for that communication are required to be reported by Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

(d) For purposes of this section, an authorization to use a signature shall be oral or written.

(e) Nothing in this section shall be construed to prohibit a person from publishing or causing to be published a reproduction of all or part of a document containing an actual or authorized signature,

provided that the signature so reproduced shall not, with the intent to deceive, be incorporated into another document in a manner that falsely suggests that the person whose signature is reproduced has signed the other document.

(f) Any violation of this section is a public offense punishable by imprisonment in the state prison or in the county jail, or by a fine not to exceed fifty thousand dollars ($50,000), or both.

(g) As used in this section, "signature" means a handwritten or mechanical signature, or a copy thereof.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prohibit the use of campaign advertisements containing false or unauthorized signatures in time for the 1990 elections, it is necessary that this act take effect immediately.

CHAPTER 1591

An act to amend Section 11383 of the Health and Safety Code, relating to crimes.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 11383 of the Health and Safety Code is amended to read:

11383. (a) Any person who possesses both methylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture methamphetamine, or who possesses both ethylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture N-ethylamphetamine, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(b) Any person who possesses at the same time any of the following combinations, or a combination product thereof, with

intent to manufacture phencyclidine (PCP) or any of its analogs specified in paragraph (22) of subdivision (d) of Section 11054 or paragraph (3) of subdivision (e) of Section 11055 is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years:

(1) Piperidine and cyclohexanone.

(2) Pyrrolidine and cyclohexanone.

(3) Morpholine and cyclohexanone.

(c) Any person who possesses at the same time any of the following combinations, or a combination product thereof, with intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055 is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years:

(1) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic acid.

(2) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride and hydrogen gas.

(3) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus pentachloride and hydrogen gas.

(4) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any "reducing" agent.

(d) For purposes of this section, "reducing" means a chemical reaction in which hydrogen combines with another substance or in which oxygen is removed from a substance.

(e) For purposes of this section, possession of the optical, positional, or geometric isomer of any of the compounds listed in this section shall be deemed to be possession of the derivative substance.

(f) For purposes of this section, possession of immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone, piperidine, cyclohexanone, pyrrolidine, morpholine, ephedrine, pseudoephedrine, norpseudophedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid, thionyl chloride, or phosphorus pentachloride shall be deemed to be possession of such a derivative substance. Additionally, possession of any compound or mixture containing piperidine, cyclohexanone, pyrrolidine, or morpholine ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid, thionyl chloride, or phosphorus pentachloride shall

be deemed to be possession of the substance.

(g) Subdivisions (a), (b), (c), (e), and (f) do not apply to drug manufacturers licensed by this state or person authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

CHAPTER 1592

An act to repeal and add Section 12404 of the Insurance Code, relating to insurance.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 12404 of the Insurance Code is repealed.

SEC. 2. Section 12404 is added to the Insurance Code, to read:

12404. (a) It is unlawful for any title insurer, underwritten title company or controlled escrow company to pay, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business. Actual placement or referral of title business is not a precondition to a violation of this section, whether the violation is or is not a per se violation pursuant to subdivision (c).

(b) For purposes of this section, the following definitions are applicable:

(1) "Person" means any individual or entity who is any owner or prospective owner, lessee or prospective lessee of real property or any interest therein, any obligee or prospective obligee of an obligation secured or to be secured either in whole or in part by real property or any interest therein, or any person who is acting or who is in the business of acting as agent, representative, attorney, or employee of those persons.

(2) "Title business" means the "business of title insurance" as defined in Section 12340.3, and includes, but is not limited to, the offering of title insurance, escrow, or other services by a title insurer, underwritten title company, or controlled escrow company.

(3) "Compensating balance" is a balance maintained in a lending institution by any title insurer, underwritten title company, or controlled escrow company for the express or implied purpose of influencing the extension of credit to a third party or the provision of goods, services or benefits to a third party as an inducement for the placement or referral of title business by a third party.

(c) The following activities, whether performed directly or indirectly, are deemed per se inducements for the placement or referral of title insurance business by any person and are unlawful:

(1) Paying or offering to pay, furnishing or offering to furnish, or

providing or offering to provide assistance with the business expenses of any person, including, but not limited to, rent, employee salaries, furniture, copiers, facsimile machines, automobiles, telephone services or equipment, or computers.

(2) Providing or offering to provide any form of consideration intended for the benefit of any person, including cash, below market rate loans, automobile charges, or merchandise or merchandise credits.

(3) Placing or offering to place on behalf of any person, compensating balances.

(4) Advancing or paying or offering to advance or pay money on behalf of any person into an escrow to facilitate the closing thereof, other than any sum which represents the proceeds of a loan made in the ordinary course of business and in compliance with Section 1176; or an advance not to exceed 2 percent of the sales price of the real property being sold or exchanged through the escrow or the amount of any loan secured by real property involved in the escrow, whichever is greater; or the extension of credit or an advance for the costs, fees and expenses of the escrow or of the title insurance issued or to be issued in connection therewith.

(5) Disbursing or offering to disburse on behalf of any person escrow funds held by a title insurer, underwritten title company or controlled escrow company before the conditions of the escrow applicable to that disbursement have been met, or in a manner which does not conform to Section 12413.1, including disbursing or offering to disburse before the expiration of the appropriate period established in Section 12413.1.

(6) Furnishing or offering to furnish all or any part of the time or productive effort of any employee of the title insurer, underwritten title company, or controlled escrow company to any person for any service unrelated to the title business.

(d) Reasonable expenditures for food, beverages, entertainment, educational programs, and promotional items constituting ordinary business expenses are deemed not to constitute an inducement for the placement or referral of title business, if the expenditures are correctly reported and properly substantiated as an ordinary and necessary business expense under provisions of the Internal Revenue Code and regulations issued thereunder, and the expenditures do not violate any other section of law, including, but not limited to, Section 10177.4 of the Business and Professions Code.

(e) The provision or payment of any form of consideration as an inducement for the placement or referral of title business not specifically set forth in this section shall not be presumed lawful merely because they are not specifically prohibited.

(f) The Insurance Commissioner may determine compliance and enforce the provisions of this section by written order, regulation or written consent which may take into consideration standards, conditions, guidelines, principles, or definitions utilized by other states or federal agencies but those standards, conditions, guidelines,

principles, or definitions shall not be determinative.

(g) It is the intent of the Legislature that the enactment of this section shall have no effect on the applicability of other sections of the Insurance Code that are in existence prior to the enactment of this section and which specifically, or by implication, refer to this section. The Legislature hereby intends that this section, including the specific terms employed within it, shall be liberally construed for the purpose of protecting consumers of title business.

CHAPTER 1593

An act to amend Sections 1091 and 1126 of, and to add Section 1129.1 to, the Government Code, and to amend Sections 39050, 39925, 40306, 41013, 41016, 41305, 41308, 41331, 41336, 41338, 41553, and 41555 of, to add Section 40307 to, and to add Chapter 1.5 (commencing with Section 41025) to Part 4 of Division 14 of, the Water Code, relating to water districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990]

The people of the State of California do enact as follows:

SECTION 1. Section 1091 of the Government Code is amended to read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body of the board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5, or that of an employee of an educational institution or agency.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business

organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) That of an officer, director, or employee of a bank, bank holding company, or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, or architect employed by a

consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(13) That of an elected officer otherwise subject to Section 1090 who is also an elected director of a water replenishment district.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

SEC. 1.2. Section 1126 of the Government Code is amended to read:

1126. (a) Except as provided in Sections 1128, 1129, and 1129.1, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).

(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee's outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer

or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient.

The local agency may adopt rules governing the application of this section. The rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee. Nothing in this section is intended to abridge or otherwise restrict the rights of public employees under Chapter 9.5 (commencing with Section 3201) of Title 1.

SEC. 1.4. Section 1129.1 is added to the Government Code, to read:

1129.1. Service on the Board of Directors of the Central and West Basin Water Replenishment District in the County of Los Angeles by a person serving as an elected city official in a city located wholly or partly within the water replenishment district shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to, duties of the officer serving in either capacity.

SEC. 1.6. Section 39050 of the Water Code is amended to read:

39050. For all purposes of this division relating to signing petitions and voting at any election, and for all other purposes when the question of title to or value of land claimed to be owned by a petitioner or voter is involved, the most recent county assessment roll in each affected county, or the last final election roll prepared in accordance with Section 41027 if the board elects to follow the procedure provided in Chapter 1.5 (commencing with Section 41025) of Part 4, shall be sufficient evidence of ownership and value.

SEC. 2. Section 39925 of the Water Code is amended to read:

39925. Not less than 10 days before the formation election, any 10 or more voters in any division of the proposed district may file with the department a petition requesting that the name of a specified person be placed on the ballot for the particular division as a candidate for the office of director to represent the particular division. Only the names proposed by the petitions filed with the department shall be printed on the ballots for the various divisions of the district. The date of actual receipt of any such petition by the department shall be deemed to be the date of filing of the same with the department. If there are less than 10 voters in any division, signatures of one-third of the number of voters, rounded up to the

next whole number, shall be required to nominate a candidate.

SEC. 3. Section 40306 of the Water Code is amended to read:

40306. The term of office of each director elected after the formation election shall be four years, and until his or her successor is elected and has qualified. Upon the district receiving actual written notice that a director or the entity the director represents no longer is a holder of title within the district or that the holder of title the director represents is withdrawing the director's authorization, a vacancy shall be deemed to occur, but the director shall continue to serve until his or her successor is elected or appointed and qualified.

SEC. 4. Section 40307 is added to the Water Code, to read:

40307. In order to be nominated and eligible for the office of director, a candidate shall be a holder of title within the district. If a holder of title to land is not a natural person, the holder of title to land may designate a representative or representatives to be eligible to be elected or appointed as a director by filing with the district written evidence of that designation.

SEC. 5. Section 41013 of the Water Code is amended to read:

41013. The department prior to the formation election, and at all subsequent elections the board, shall prepare, certify, and furnish to the election board at each voting place in the district a copy of each of the assessment rolls pertaining to any land in the precinct or, if applicable, the election roll prepared in accordance with Section 41027.

SEC. 6. Section 41016 of the Water Code is amended to read:

41016. The most recent county assessment rolls and lists, or, if applicable, the election roll prepared in accordance with Section 41027, shall be used by the election boards in determining the qualifications of voters and the number of votes each voter is entitled to cast.

SEC. 7. Chapter 1.5 (commencing with Section 41025) is added to Part 4 of Division 14 of the Water Code, to read:

CHAPTER 1.5. ALTERNATIVE ELECTION ROLL

41025. As an alternative to using the most recent county assessment roll, the board may cause an election roll to be prepared and used for determining ownership and value of parcels for all purposes involving elections. For purposes of a formation election, the department may also elect to cause an election roll to be prepared and shall perform those functions designated to be performed by the board or secretary in this chapter. If the procedures provided in this chapter are used, Sections 41018 to 41020, inclusive, shall not apply.

41026. The board shall prepare a preliminary election roll. The preliminary election roll shall include all lands listed on the most recent county assessment roll, any federal and state land, and any other unvalued lands lying within the district. The roll shall list for

each parcel within each division the holder of title to land, the number of acres, the estimated value, as determined by a qualified appraiser, exclusive of improvements, minerals, and mineral rights therein, and the number of votes assigned to that parcel. The secretary shall publish a notice of preparation of the preliminary election roll in accordance with Section 39057, indicating the date, time, and place of the hearing to consider the preliminary election roll. A copy of the preliminary election roll shall be available at the district's offices or other convenient location during regular business hours, and information concerning the availability of the preliminary election roll shall be provided in the published notice.

41027. The board shall hold a public hearing to receive any testimony regarding the preliminary election roll. The hearing may be continued from time to time. Following the hearing and deliberations, the board shall make any changes to the preliminary election roll and shall order the roll finalized in accordance with any such changes. The secretary shall certify and file the final election roll not later than the first publication of the notice provided by Section 41308.

41028. The final election roll shall be used for all purposes relating to elections, until subsequently modified in accordance with the procedures set forth in this chapter, or until the board elects at least 84 days prior to a general election to use the most recent county assessment roll. The board may at any time cause a revised preliminary election roll to be prepared in accordance with Section 41026. Upon written petition filed by the holders of title to land with at least 10 percent of the votes based on the last finalized election roll, at least 150 days before any general or special election, the board shall prepare a new preliminary election roll and follow the procedures provided for in Section 41027. At least 84 days prior to an election, the district shall update the names listed as the holder of title to land of each parcel on the election roll and may rely on the most recent county assessment roll for determining ownership.

SEC. 8. Section 41305 of the Water Code is amended to read:

41305. Not less than 60 days before the election, any 10 or more voters in any division of the district may file with the board a petition requesting that the name of a specified person be placed on the ballot for the particular division as a candidate for the office of director to represent the particular division. Only the names proposed by the petitions filed with the board shall be printed on the ballots for the various divisions of the district. The date of actual receipt of any such petition by the board shall be deemed to be the date of filing of the same with the board. If there are less than 10 voters in any division, signatures of one-third of the number of voters, rounded up to the next whole number, shall be required to nominate a candidate.

SEC. 9. Section 41308 of the Water Code is amended to read:

41308. Not less than 84 days before a general election, the secretary shall give notice of the provisions of Sections 41305 and

41307 by causing a notice to be published one time in each affected county stating the time of the forthcoming general election and reciting the provisions of Sections 41305 and 41307. The notice shall also state whether the most recent county assessment roll or an election roll prepared pursuant to Section 41027 shall be used for the election for purposes of establishing title to and value of land.

SEC. 10. Section 41331 of the Water Code is amended to read:

41331. One of the judges of the election shall deliver to each of the voters one ballot for the votes to which the voter is entitled by this division.

SEC. 11. Section 41336 of the Water Code is amended to read:

41336. The names shall be arranged in groups under the designation of the office for which each person named is a candidate, in order determined by random drawing following the procedures provided by the Elections Code.

SEC. 12. Section 41338 of the Water Code is amended to read:

41338. No director shall be elected by the district at large, unless a court of competent jurisdiction has determined or hereinafter so determines.

SEC. 13. Section 41553 of the Water Code is amended to read:

41553. If, by the ninth day prior to the special election, only one person has been nominated as provided in Section 41555, or no one has been nominated for the office, the board may order that an election not be held, following the same appointment procedures provided in Section 41307. If an election is to be held, unless otherwise in this division expressly specified, the election shall be held and the result determined and declared as nearly as may be in accordance with the provisions of this division relating to general elections.

SEC. 14. Section 41555 of the Water Code is amended to read:

41555. Not less than 10 days before the special election, any 10 or more voters in any division of the district may file with the board a petition requesting that the name of a specified person be placed on the ballot for the particular division as a candidate for the office of director to represent the particular division. Only the names proposed by the petitions filed with the board shall be printed on the ballots for the various divisions of the district. The date of actual receipt of any such petition by the board shall be deemed to be the date of filing of the same with the board. If there are less than 10 voters in any division, signatures of one-third of the number of voters, rounded up to the next whole number, shall be required to nominate a candidate.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that

the act takes effect pursuant to the California Constitution.

SEC. 16. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the Central and West Basin Water Replenishment District. The Legislature, therefore, finds that the enactment of Section 1129.1 of the Government Code by Section 3 of this act is necessary.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that this act becomes operative in sufficient time that requisite steps for the 1991 district elections may be carried out in accordance with this act, it is necessary that this act take effect immediately.

CHAPTER 1594

An act to add Chapter 9.4 (commencing with Section 6240) to Title 7 of Part 3 of the Penal Code, relating to corrections, and making an appropriation therefor.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 9.4 (commencing with Section 6240) is added to Title 7 of Part 3 of the Penal Code, to read:

CHAPTER 9.4. SUBSTANCE ABUSE COMMUNITY CORRECTIONAL DETENTION CENTERS

6240. The Legislature finds and declares the following:

(a) The number of people in state prisons whose primary commitment offense was for drug law violations represents approximately 24 percent of the inmate population. Based on a representative sample study of new felon admissions during 1988, it is estimated that approximately 76 percent of the new commitment admissions to prison have a known history of drug abuse.

The number of parole violators returned to prison for drug violations increased 2200 percent from 1980 to 1988. In fiscal year 1988–89, drug charges were a known contributing factor in over 64 percent of parolees returned to prison for parole violations.

(b) The relationship between public safety, recidivism, and substance abuse is undeniable and significant.

(c) As pointed out by the California Blue Ribbon Commission on

Inmate Population Management in its January 1990 report, both state and local correction systems are presently lacking sufficient programs and strategies to intervene with substance abuse and other behaviors that contribute to criminality. Judges and parole authorities lack the options of community correctional facilities and programs with substance abuse intervention and treatment when managing parole violators, probationers, parolees, and nonviolent offenders with a history of substance abuse.

(d) There presently does not exist a model for a state and local center to house substance abusers, increase employability skills, provide counseling and support, and make treatment programs available to intervene and treat substance abuse, to reduce the crime problem and the social costs which these offenders bring upon society, themselves, and their families.

It is, therefore, the intent of the Legislature to provide for the establishment of substance abuse community correctional centers and programs to be operated locally in order to implement state-of-the-art rehabilitation programs commensurate with public safety considerations.

It is further the intent of the Legislature to focus these efforts in local communities in order to blend state and local efforts to achieve a higher success rate and lower recidivism, and to reduce the number of substance abusers and offenders who are currently being sent to state prison.

It is also the intent of the Legislature that these programs and housing facilities be built and operated in a manner providing maximum safety to the public commensurate with the purpose of the programming, and that the facilities be kept drug-free by whatever legal means are required.

The facilities and the programs shall be designed and operated in joint efforts by the state and counties, with primary funding from the state for construction of the facilities.

It is the intent of the Legislature that funds disbursed pursuant to this chapter be used to construct the maximum possible number of community beds for this purpose commensurate with public safety requirements.

6240.5. This act shall be known, and may be cited, as the Substance Abuse Community Correctional Treatment Act.

6240.6. For purposes of this chapter, the following definitions shall apply:

(a) "Board" means the Board of Corrections.

(b) "Department" means the Department of Corrections.

(c) "Center" means a substance abuse community correctional detention center.

(d) "Construction" means new construction, reconstruction, remodeling, renovation, or replacement of facilities, or a combination thereof.

(e) "Facility" means the physical buildings, rooms, areas, and equipment used for the purpose of a substance abuse community

correctional detention center.

6241. (a) The Substance Abuse Community Correctional Detention Centers Fund is hereby created within the State Treasury. The Board of Corrections is authorized to provide funds, as appropriated by the Legislature, for the purpose of establishing substance abuse community correctional detention centers. These facilities shall be operated locally in order to manage parole violators, those select individuals sentenced to state prison for short periods of time, and other sentenced local offenders with a known history of substance abuse, and as further defined by this chapter.

(b) The facilities constructed with funds disbursed pursuant to this chapter in a county shall contain no less than 50 percent of total beds for use by the Department of Corrections.

(1) Upon agreement, the county and the department may negotiate any other mix of state and local bed space, providing the state's proportionate share shall not be less than 50 percent in the portion of the facilities financed through state funding.

(2) Nothing in this chapter shall prohibit the county from using county funds or nonrestricted jail bond funds to build and operate additional facilities in conjunction with the centers provided for in this chapter.

(c) Thirty million dollars ($30,000,000) in funds shall be provided from the 1990 Prison Construction Fund and the 1990–B Prison Construction Fund, with fifteen million dollars ($15,000,000) each from the June 1990 bond issue and the November 1990 bond issue, for construction purposes set forth in this chapter, provided that funding is appropriated in the state budget from the June and November 1990, prison bond issues for purposes of this chapter.

(d) Funds shall be awarded to counties based upon the following policies and criteria:

(1) Priority shall be given to urban counties with populations of 450,000 or more, as determined by Department of Finance figures. The board may allocate up to 10 percent of the funding to smaller counties or combinations of counties as pilot projects, if it concludes that proposals meet the requirements of this chapter, commensurate with the facilities and programming that a smaller county can provide.

(2) Upon application and submission of proposals by eligible counties, representatives of the board shall evaluate proposals and select recipients.

To help ensure that state-of-the-art drug rehabilitation and related programs are designed, implemented, and updated under this chapter, the board shall consult with not less than three authorities recognized nationwide with experience or expertise in the design or operation of successful programs in order to assist the board in all of the following:

(A) Drawing up criteria on which requests for proposals will be sought.

(B) Selecting proposals to be funded.

(C) Assisting the board in evaluation and operational problems of the programs, if those services are approved by the board.

Funding also shall be sought by the board from the federal government and private foundation sources in order to defray the costs of the board's responsibilities under this chapter.

(3) Preference shall be given to counties that can demonstrate a financial ability and commitment to operate the programs it is proposing for a period of at least three years and to make improvements as proposed by the department and the board.

(4) Applicants receiving awards under this chapter shall be selected from among those deemed appropriate for funding according to the criteria, policies, and procedures established by the board. Criteria shall include success records of the types of programs proposed based on nationwide standards for successful programs, if available, expertise and hands-on experience of persons who will be in charge of proposed programs, cost effectiveness, including cost per bed, speed of construction, a demonstrated ability to construct the maximum number of beds which shall result in an overall net increase in the number of beds in the county for state and local offenders, comprehensiveness of services, location, participation by private or community-based organizations, and demonstrated ability to seek and obtain supplemental funding as required in support of the overall administration of this facility from sources such as the Department of Alcohol and Drug Programs, the Office of Criminal Justice Planning, the National Institute of Corrections, the Department of Justice, and other state and federal sources.

(5) Funds disbursed under subdivision (c) shall be used for construction of substance abuse community correctional centers, with a level of security in each facility commensurate with public safety for the types of offenders being housed in or utilizing the facilities.

(6) Funds disbursed under this chapter shall not be used for the purchase of the site. Sites shall be provided by the county. However, a participating county may negotiate with the state for use of state land at nearby corrections facilities or other state facilities, provided that the locations fit in with the aims of the programs established by this chapter.

The county shall be responsible for ensuring the siting, acquisition, design, and construction of the center consistent with the California Environmental Quality Act pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(7) Staff of the department and the board, as well as persons selected by the board, shall be available to counties for consultation and technical services in preparation and implementation of proposals accepted by the board.

(8) The board also shall seek advice from the Department of Alcohol and Drug Programs in exercising its responsibilities under this chapter.

(9) Funds shall be made available to the county and county

agency which is selected to administer the program by the board of supervisors of that county.

(10) Area of greatest need can be a factor considered in awarding contracts to counties.

(11) Particular consideration shall be given to counties that can demonstrate an ability to provide continuing counseling and programming for offenders in programs established under this chapter, once the offenders have completed the programs and have returned to the community.

(12) A county may propose a variety of types and sizes of facilities to meet the needs of its plan and to provide the services for varying types of offenders to be served under this chapter. Funds granted to a county may be utilized for construction of more than one facility.

Any county wishing to use existing county-owned sites or facilities may negotiate those arrangements with the Department of Corrections and the Board of Corrections to meet the needs of its plan.

6241.5. Because of the difficulties of finding locations for programs described in this chapter, the state shall assist in making state-owned lands available to counties for purposes of this chapter, so long as those efforts do not impede an agency's operations or planned expansions and are commensurate with public safety requirements.

6242. (a) The county shall assume full responsibility to administer and operate the center and program consistent with the criteria set forth within this chapter and those established by the board. This shall include maintenance and compliance with all codes, regulations, and health standards.

(b) The county shall select a local governmental department to operate the facility in accordance with the standards and oversight provided for in this chapter.

The facility shall be owned by the department for the duration of the payment of the bond used to finance construction of the facility. Upon completion of bond repayment, ownership of the facility shall be vested in the county. Ownership of a county facility renovated with funds awarded pursuant to this chapter shall be by the department for the period of bond repayment, after which ownership shall revert to the county. The department shall retain the option to lease from the county no less than 50 percent of inmate beds after completion of bond repayment.

If a county willfully terminates its participation in this act prior to completion of bond repayment or if its grant is terminated by the board for noncompliance with program regulations, ownership of the facility shall remain vested in the department. The department shall retain the option to lease as provided in this subdivision.

(c) Counties or the department shall operate all services and programs in secure facilities pursuant to this chapter with only county or state merit system employees, except that private nonprofit providers or individual professionals with demonstrated

expertise and community experience may also be utilized to provide substance abuse treatment programs. Treatment programs outside secure facilities pursuant to this chapter may be provided only by county or state staff, by private nonprofit providers, or by individual professionals with demonstrated expertise and experience in providing services to this population of the community.

(d) Custody in secure facilities shall be provided by peace officers who have completed the minimum standards for the training of local correctional peace officers established under Section 6035.

(e) Parolees, parole violators, and state prisoners shall remain under overall supervision of state parole officers.

(f) The department shall contract to reimburse the county for allotted bed space and programming for state offenders based on actual cost plus a reasonable fee, but in no instance shall that amount exceed the average cost of housing an inmate in a state prison facility, as determined annually by the director.

(g) A county may bill the state for services provided to state parolees pursuant to this chapter on a pro rata basis of the cost of providing the programs and services, if requested by the department.

(h) The department and the board, as well as participating counties, shall seek funding from the federal government and from private foundation sources to help meet the costs of the programs outlined in this chapter.

(i) It shall be the responsibility of the board, the department, and the design and implementation panel to keep abreast of improvements in programs of the types established by this chapter, and to attempt to revise and update programs as state-of-the-art advances develop.

(j) Requests for proposals shall be ready for submission to eligible counties within nine months after the effective date of this chapter. Eligible counties shall submit proposals within six months after the request for proposals is submitted.

(k) An amount totalling no more than 1½ percent of the total amount of funds to be disbursed under this chapter is hereby appropriated from the 1990 Prison Construction Fund and the 1990–B Prison Construction Fund to the board to be used for administrative costs.

(*l*) Following formal acceptance of proposals submitted by counties, the board shall have authority to modify, expand, or revise county programs, if requested by counties, or if the board concludes that changes should be made to improve, expand, or reduce the scope or approach of programs. This shall be done after formal notice to a county of proposed changes and opportunity for a county to submit evidence. The board also shall be able to recommend additional or reduced funding for a program, if funding becomes available upon appropriation by the Legislature.

6242.5. (a) The board shall establish minimum standards, including security requirements, for the construction of facilities

pursuant to this chapter.

(b) The board shall develop an architectural program describing the functions which the facility will be expected to serve, but which deemphasizes the correctional and detention nature of the exterior of the facilities in order to ease the difficulty in finding acceptable sites.

(c) Counties may substitute renovation of an existing structure for new construction, but renovation costs per bed shall not exceed the cost of new construction based on initial cost and useful life of the facility, and shall meet the program design standards established by the board. However, participation by a county or use of existing facilities for programs under this chapter shall not be utilized by a county to avoid meeting its needs for jail-bed construction and housing of jail inmates.

(d) Per-bed cost of secure facilities proposed by a county shall not exceed the cost of current similar construction by the department.

(e) The county shall lease the site on which the facility is located to the state for a term of not less than the period of bond repayment. The department shall pay to the county as lease the sum of one dollar ($1) per year beginning the first month after the first payment for the repayment of the bond to continue through the duration of the bond used to finance construction of the facility.

6242.6. (a) The board shall provide evaluation of the progress, activities, and performance of each center and participating county's progress established pursuant to this chapter and shall report the findings thereon to the Legislature two years after the operational onset of each facility.

(b) The board also shall provide to the Joint Legislative Committee on Prison Construction and Operations and to the Joint Legislative Budget Committee, on January 1 of each year beginning 1992, a report on the progress of contracting with counties for centers as provided in this chapter.

(c) The board shall select an outside monitoring firm in cooperation with the Auditor General's Office, to critique and evaluate the programs and their rates of success based on recidivism rates, drug use, and other factors it deems appropriate. Two years after the programs have begun operations, the report shall be provided to the Joint Legislative Prisons Committee, participating counties, the department, the Department of Alcohol and Drug Programs, the State Department of Health Services, and other sources the board deems of value.

(d) The department shall be responsible for the ongoing monitoring of contract compliance for state offenders placed in each center.

6243. Primary offender groups to be dealt with in the programs established by this chapter shall be probation or parole violators who would otherwise be returned to jail or prison.

The following standards for selection shall apply:

(a) The Director of Corrections, or his or her designee, together

with local parole officials, shall select offenders committed to state prison for placement in not less than 50 percent of the program beds established by this chapter. Eligible offenders shall be parole violators and felons committed to state prison who, after credit deduction for presentence incarceration and pursuant to Section 2933, would otherwise have served an actual term of six months or less in state prison. Offenders selected shall have a demonstrated history of alcohol or controlled substances abuse, or both, but shall not include any of the following:

(1) Offenders convicted at anytime of a violent felony, as defined in subdivision (c) of Section 667.5 whether in California or any other jurisdiction for an offense with the same elements.

(2) Offenders who have lost work credits while currently in prison for an offense listed in paragraph (1) of subdivision (a) of Section 2932, except for assault with a deadly weapon or a caustic substance.

(3) Offenders currently convicted of burglary of an inhabited dwelling.

(4) Offenders convicted on two or more separate occasions of violations of Section 11351, 11351.5, 11352, 11353, 11370.1, 11370.6, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code for selling or transporting for sale, manufacturing for sale, processing for sale, importing for sale, or administering any controlled substance listed in these sections, or for attempting to commit any of these offenses for those purposes and who has served at least one term in prison for violating one of these sections.

(b) The maximum period of participation in a center program shall not exceed the maximum period for which the offender could have been incarcerated in county jail or state prison. Upon release from a center, a state offender shall be subject to the parole provisions of Section 3000. Local offenders shall be subject to all conditions of probation, if probation was imposed at the time of sentencing.

(c) The parole of an offender placed in a center following revocation of parole shall remain revoked during the period of participation in a center.

(d) Individuals eligible for this program who are deemed unfit for participation by either custodial or program staff at any time shall be transferred to a state prison or county facility to which they would otherwise have been committed and shall serve their remaining sentence minus the time served at the center.

(e) Except upon agreement between the county and the department, placement of state offenders in a center is limited to parolees on parole in that county and new commitments sentenced from that county.

(f) The county shall select local offenders for placement in up to 50 percent of the program beds established by this chapter. These offenders shall be persons convicted and sentenced to county jail, whether or not as a condition of probation, and who have a demonstrated history of abuse of alcohol or controlled substances, or

both.

(g) State prisoners participating in these programs shall be eligible for work credit time reductions under provisions applicable to state prisoners committed to state prison.

(h) Primary emphasis in this program shall be toward parole violators and persons sentenced to prison or jail for short terms and for whom rehabilitation efforts should be provided.

(i) The department shall regularly notify the sheriff's department and the probation department of a participating county of offenders placed into the program or released from the program established by this chapter. The county shall likewise regularly notify local parole officials of persons placed into or released from its programs set up by this chapter.

The sheriff's department, probation and parole officials, and the Board of Prison Terms shall be permitted to recommend for or against placement of persons into these programs, as shall the judiciary of the county.

(j) Facilities may not serve as housing or parole or probation offices for offenders not a part of programs set up by this chapter.

6245. (a) In submitting a proposal, a county's plan shall (1) include at least all of the following elements that meet standards established by the board in its request for proposal, and (2) demonstrate that its program will have strong links to the community organizations involved in providing those elements, and that those community organizations have helped in designing the proposal:

(1) A rigorous program of substance abuse testing.
(2) A drug-free environment.
(3) Substance abuse treatment.
(4) Employment services.
(5) Basic education services.
(6) Mental health services and family counseling.
(7) A strong linkage to probation and parole.

6246. Each recipient county shall set up a program oversight committee, under rules and guidelines the Board of Corrections formulates, which shall include representatives from the following groups:

(a) Parole officials.
(b) Probation officials.
(c) Sheriff's department officials.
(d) County alcohol and drug abuse officials.
(e) Program contractors.
(f) Local judiciary personnel.
(g) Social welfare agency personnel.
(h) Local labor and employment representatives.

Responsibilities of the program oversight committee shall include, but not be limited to, regular reviews of program operations and criteria for offenders being placed into it, discussion and resolution of problems that may arise, costs, and other duties that may be

assigned it by the Board of Corrections.

CHAPTER 1595

An act to add and repeal Section 16028.2 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 16028.2 is added to the Vehicle Code, to read:

16028.2. (a) The department shall report to the Legislature on the number of uninsured motorists. The Department of Insurance and the Department of the California Highway Patrol shall cooperate by providing any information in their possession that is requested by the department and that is relevant for the purposes of preparing the report.

(b) The report shall be submitted on or before December 31, 1991, and may include, but need not be limited to, all of the following information:

(1) The number of motorists involved in reportable accidents who do not have insurance or another form of financial responsibility.

(2) The number of notices to appear issued pursuant to Section 16028 and the disposition of the notices.

(c) The information required by subdivision (b) and any other pertinent information shall be provided by all of the following categories:

(1) By calendar year, for 1988 and 1989.

(2) By county, either by the county of residence of the motorist or by the county in which the accident occurred and the county where the notice was issued, if that information is available.

(d) The report may also include the costs incurred by insured motorists as a result of accidents caused by uninsured motorists and an estimate of the average insurance policy premium cost to an insured motorist.

(e) This section shall remain in effect only until January 1, 1992, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

CHAPTER 1596

An act to amend Sections 8208, 8250, and 8468.5 of, and to add Sections 8250.5 and 56244 to, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature recognizes that many children who are disabled or are otherwise in need of special education services also need child care and development programs, both for the children's optimum development in a least restrictive environment and to enable their parents to work.

In California, over 250,000 children have exceptional needs and, for most of these children, access to child care is limited, and long waiting lists are common.

Child care providers will profit from staff development activities that assist them in understanding the special needs of children with disabilities, in recognizing the many strengths and typical developmental patterns of these children, and in gaining confidence in the appropriateness of serving children with disabilities in all child care and development settings. The Legislature recognizes that the Superintendent of Public Instruction has made staff development activities available in this arena to child care center staff and family day care providers. First the Special Education Resource Network and now the Personnel Development for Infant Preschool Programs have provided excellent services to child care and development staff. The Legislature recognizes those efforts and intends to expand and extend them in order to reach more child care and development staff.

SEC. 2. Section 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) "Assigned reimbursement rate" is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child care day of average daily enrollment level of service required.

(b) "Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(c) "Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private non-tax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant

to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) "Attendance" means the number of children present at a child care and development facility. "Attendance," for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(e) "Capital outlay" means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(f) "Caregiver" means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(g) "Child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

(h) "Child care and development programs" means those programs that offer a full range of services for children from infancy to 14 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) Campus child care and development.
(2) General child care and development.
(3) Intergenerational child care and development.
(4) Migrant child care and development.
(5) Schoolage parenting and infant development.
(6) State preschool.
(7) Resource and referral.
(8) Severely handicapped.
(9) Family day care.
(10) Alternative payment.
(11) Child abuse protection and prevention services.
(12) Schoolage community child care.

(i) "Short-term respite child care" means child care service to assist families whose children have been identified through written referral from a legal, medical, social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(j) "Child care and development services" means those services designed to meet a wide variety of needs of children and their

families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) "Children at risk of abuse, neglect, or exploitation" means children who are identified as such in a written referral from a legal, medical, or social service agency, or emergency shelter.

(l) "Children with exceptional needs" means children who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, severely handicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting. Children with exceptional needs who are between the ages of 6 and 21 years, inclusive, shall also meet the criteria for that age group specified in Section 56026.

(m) "Children with special needs" includes infants to the age of two years and 9 months; limited-English-speaking-proficient children; children with exceptional needs; limited-English-speaking-proficient handicapped children; and children at risk of neglect, abuse, or exploitation.

(n) "Closedown costs" means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(o) "Cost" includes, but is not limited to, expenditures that are related to the operation of child development programs. "Cost" may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs.

(p) "Elementary school," as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(q) "Severely handicapped children" means children under the age of six years who need intensive special education services and who satisfy the applicable requirements of Section 56026 or 56030.5, and children from ages 6 to 21 years, inclusive, who meet the criteria established by Section 56030.5. These children, ages birth to 21 years, inclusive, may be assessed by public school special education staff, regional center staff, or another appropriately licensed clinical professional.

(r) "Health services" includes, but is not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 3.4 (commencing with Section 320) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(s) "Higher educational institutions" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(t) "Intergenerational center" means a facility in which child care and development services are provided, on an ongoing basis, on the same premises as senior care services, involving activities organized to provide interaction between children and seniors in a manner designed to meet the needs of both. The participation of seniors in any activity of interaction with children, as described in this subdivision, shall be voluntary.

(u) "Intergenerational staff" means persons of various generations.

(v) "Limited-English-speaking-proficient and non-English-speaking-proficient children" means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(w) "Parent" means any person living with a child who has responsibility for the care and welfare of the child.

(x) "Program director" means a person who, regardless of his or her title, has administrative and programmatic responsibility for a child care and development program operated at two or more sites. These persons shall hold a children's center supervision permit, or its equivalent, as specified in Section 8360, or shall demonstrate progress in meeting these requirements by June 1, 1990, as determined by standards established by the Superintendent of Public Instruction and shall have been employed as a program director as of January 1, 1986.

(y) A "proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(z) "Resource and referral programs" means programs that

provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(aa) "Site supervisor" means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall meet the qualifications prescribed by the state licensing regulations for a child care center director. Effective July 1, 1987, these persons shall additionally hold a regular children's center instructional permit, and shall have completed not less than six units of administration and supervision coursework in child development. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential.

(bb) "Standard reimbursement rate" means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(cc) "Startup costs" means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(dd) "State preschool services" means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(ee) "Support services" means those services which, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(ff) "Teacher" means a person with the appropriate certificate who provides program supervision and instruction which includes supervision of a number of aides, volunteers, and groups of children.

(gg) "Workday" means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

(hh) This section shall remain in effect only until January 1, 1993,

and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1993, pursuant to Section 9611 of the Government Code, Section 8208 of the Education Code, as amended by Section 1 of Chapter 1120 of the Statutes of 1987, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 2.5. Section 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) "Assigned reimbursement rate" is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of enrollment.

(b) "Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(c) "Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private non-tax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) "Attendance" means the number of children present at a child care and development facility. "Attendance," for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(e) "Capital outlay" means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(f) "Caregiver" means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(g) "Child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

(h) "Child care and development programs" means those programs that offer a full range of services for children from infancy to 14 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) Campus child care and development.
(2) General child care and development.
(3) Intergenerational child care and development.
(4) Migrant child care and development.
(5) Schoolage parenting and infant development.
(6) State preschool.
(7) Resource and referral.
(8) Severely handicapped.
(9) Family day care.
(10) Alternative payment.
(11) Child abuse protection and prevention services.
(12) Schoolage community child care.

(i) "Short-term respite child care" means temporary child care services, provided for less than 24 hours per day, to do any of the following:

(1) Provide services to families identified and referred by child protective agencies.

(2) Relieve the stress caused by child abuse, neglect, or exploitation, or the risk of abuse, neglect, or exploitation.

(3) Assist parents who, because of serious illness or injury, homelessness, or family crisis, including temporary absence from the home because of illness or injury, would be unable without assistance to provide the normal care and nurture expected of parents.

(4) Provide temporary relief to parents from the care of children with exceptional needs.

(j) "Child care and development services" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) "Children at risk of abuse, neglect, or exploitation" means children who are identified as such in a written referral from a legal, medical, or social service agency, or emergency shelter.

(*l*) "Children with exceptional needs" means children who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, severely handicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting. Children with exceptional needs who are between the ages of 6 and 21 years, inclusive, shall also meet the criteria for that age group specified in Section 56026.

(m) "Children with special needs" includes infants and toddlers up to but excluding the age of three years; limited-English-speaking-proficient children; children with exceptional needs; limited-English-speaking-proficient handicapped children; and children at risk of neglect, abuse, or exploitation.

(n) "Closedown costs" means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(o) "Cost" includes, but is not limited to, expenditures that are related to the operation of child development programs. "Cost" may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs.

(p) "Elementary school," as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(q) "Severely handicapped children" means children under the age of six years who need intensive special education services and who satisfy the applicable requirements of Section 56026 or 56030.5, and children from ages 6 to 21 years, inclusive, who meet the criteria established by Section 56030.5. These children, ages birth to 21 years, inclusive, may be assessed by public school special education staff, regional center staff, or another appropriately licensed clinical professional.

(r) "Health services" includes, but is not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 3.4 (commencing with Section 320) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(s) "Higher educational institutions" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(t) "Intergenerational center" means a facility in which child care and development services are provided, on an ongoing basis, on the same premises as senior care services, involving activities organized to provide interaction between children and seniors in a manner

designed to meet the needs of both. The participation of seniors in any activity of interaction with children, as described in this subdivision, shall be voluntary.

(u) "Intergenerational staff" means persons of various generations.

(v) "Limited-English-speaking-proficient and non-English-speaking-proficient children" means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(w) "Parent" means any person living with a child who has responsibility for the care and welfare of the child.

(x) "Program director" means a person who, regardless of his or her title, has administrative and programmatic responsibility for a child care and development program operated at two or more sites. These persons shall hold a children's center supervision permit, or its equivalent, as specified in Section 8360, or shall demonstrate progress in meeting these requirements by June 1, 1990, as determined by standards established by the Superintendent of Public Instruction and shall have been employed as a program director as of January 1, 1986. The Superintendent of Public Instruction may waive the requirements of this subdivision if he or she determines that the existence of a compelling need is appropriately documented.

(y) A "proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(z) "Resource and referral programs" means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(aa) "Site supervisor" means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall meet the qualifications prescribed by the state licensing regulations for a child care center director. Effective July 1, 1987, these persons shall additionally hold a regular children's center instructional permit, and shall have completed not less than six units of administration and supervision coursework in child development. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify

by holding an administrative credential or an administrative services credential.

(bb) "Standard reimbursement rate" means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(cc) "Startup costs" means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(dd) "State preschool services" means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(ee) "Support services" means those services which, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(ff) "Teacher" means a person with the appropriate certificate who provides program supervision and instruction which includes supervision of a number of aides, volunteers, and groups of children.

(gg) "Workday" means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

(hh) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1993, pursuant to Section 9611 of the Government Code, Section 8208 of the Education Code, as amended by Section 1 of Chapter 1120 of the Statutes of 1987, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 3. Section 8250 of the Education Code is amended to read:

8250. (a) The Superintendent of Public Instruction shall ensure that eligible children with exceptional needs are given equal access to all child care and development programs. Available federal and state funds for children with exceptional needs above the standard reimbursement amount shall be used to assist agencies in developing and supporting appropriate programs for these children.

(b) To provide children with exceptional needs with additional access to child care and development programs, the Superintendent of Public Instruction shall establish alternate appropriate placements, such as self-contained programs and innovative programs using the least restrictive environment. These programs shall be started as expansion funds become available and shall be

expanded throughout the implementation of the plan. The Superintendent of Public Instruction shall utilize existing program models and input from program specialists to develop new program criteria and guidelines for programs serving children with exceptional needs. These programs may serve children with exceptional needs to 21 years of age.

(c) Any child with exceptional needs served in child care and development programs shall be afforded all rights and protections guaranteed in state and federal laws and regulations for individuals with exceptional needs.

(d) Notwithstanding any other provision of this chapter, the Superintendent of Public Instruction may develop unique reimbursement rates for, and make reimbursements to, child care and development programs that received state funding for the 1980–81 fiscal year and serve severely handicapped children, as defined in subdivision (q) of Section 8208, when all of the following conditions exist:

(1) Eligibility for enrollment of a severely handicapped child in the program is the sole basis of the child's need for service.

(2) Services are provided to severely handicapped children from birth to 21 years.

(3) No fees are charged to the parents of the severely handicapped children receiving the services.

(e) The Superintendent of Public Instruction shall include child care and development providers in all personnel development for persons providing services for children with special needs.

SEC. 4. Section 8250.5 is added to the Education Code, to read:

8250.5. No contractor providing services pursuant to a general child care contract, a campus child care contract, a migrant child care contract, or an alternative payment child care contract may deny services to an otherwise eligible child on the basis of the child's disability unless at least 5 percent of the contractor's enrollment of children receiving subsidized child care and development services are children with exceptional needs.

SEC. 5. Section 8468.5 of the Education Code is amended to read:

8468.5. (a) Priority for enrollment in programs supported under this article shall be as follows:

(1) First priority shall be given to recipients of child protective services for children who are neglected or abused, or at risk of being neglected or abused, upon written referral from a legal, medical, social service, or public agency. Within this priority, families with the lowest gross monthly income shall be admitted first. When an agency is unable to enroll a child in need of protective services, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall go to children in kindergarten and grades 1 to 3, inclusive, and their schoolage siblings under the age of 13 years, whose families need extended day care services because parents are engaged in vocational training leading directly to a

recognized trade, paraprofession or profession; are employed or seeking employment; or are incapacitated. Within this priority, families with the lowest gross monthly income in relation to family size shall be admitted first.

(3) Third priority shall go to children in grades 4 to 9, inclusive, and their schoolage siblings under the age of 13 years, whose families need extended day care services because parents are engaged in vocational training leading directly to a recognized trade, paraprofession or profession; are employed or seeking employment; or are incapacitated. Within this priority, families with the lowest gross monthly income in relation to family size shall be admitted first.

(4) Agencies may apply to the Superintendent of Public Instruction for a waiver of these priorities, and it may be subject to criteria as may be established by the State Department of Education including all of the following:

(A) Needs assessment.

(B) Community concurrence.

(C) Cost-effectiveness.

(D) Good faith effort to meet the extended day care needs of the siblings of children to be serviced. Nothing in this section alters the priorities specified in this article but is intended, rather, to more effectively meet local needs.

(5) Each program shall serve individuals with exceptional needs, as defined in Section 56026. The percentage of children who are individuals with exceptional needs in each program shall at least equal the percentage of children in kindergarten and grades 1 to 8, inclusive, residing in the school district and receiving special education services, unless the demand for this level of service does not exist. Agencies shall report the delivery of services to children with exceptional needs to the State Department of Education.

(6) To the extent possible, and within the parameters contained in this section, programs should serve a mix of children that reflects substantially the varying socioeconomic, racial, and ethnic backgrounds of the school district in which the agency is located, and a mix of subsidized and nonsubsidized children.

(b) In order for an extended day care program to receive funding, pursuant to this article, for a child served, the child's family shall meet at least one requirement in each of the following areas:

(1) A family shall be one of the following:

(A) A recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(B) Income eligible, with first priority to be given to families with the lowest gross monthly income.

(C) One whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.

(2) A family shall need the child care service because the

requirements of either subparagraph (A) or (B) apply.

(A) The child is identified by a legal, medical, or social service agency as meeting one or more of the following criteria:

(i) The child is a recipient of protective services.

(ii) The child is neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation.

(iii) The child has a medical or psychiatric special need that cannot be met without the provision of extended day care.

(B) The child's parents meet one of the following criteria:

(i) The parents are engaged in vocational training leading directly to a recognized trade, paraprofession, or profession.

(ii) The parents are employed or seeking employment.

(iii) The parents are incapacitated, including a medical or psychiatric need that cannot be met without the provision of extended day care.

(c) The Superintendent of Public Instruction shall establish guidelines according to which the head teacher or a duly authorized representative of the extended day care program shall certify children as eligible for state reimbursement pursuant to this article.

(d) The Superintendent of Public Instruction may grant specific waivers to agencies proposing to accept eligible members of special populations in other than strict income order so long as appropriate fees are paid. The waivers may be used to enable agencies to meet the requirements of this article to serve children with exceptional needs.

SEC. 6. Section 56244 is added to the Education Code, to read:

56244. The superintendent shall, to the extent possible using federal and state funds appropriated for this purpose, provide staff development to child care center staff and family day care providers to improve child care services to individuals with exceptional needs.

SEC. 7. The sum of one hundred eighty thousand dollars ($180,000) is hereby appropriated from the child care carryover funds available pursuant to Section 8278 of the Education Code for purposes of Section 56244 of the Education Code. It is the intent of the Legislature that funding in future fiscal years for purposes of Section 56244 of the Education Code be provided through the annual Budget Act.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 8208 of the Education Code proposed by both this bill and AB 819. It shall only become operative if (1) both bills are enacted and become effective January 1, 1991, (2) each bill amends Section 8208 of the Education Code, and (3) this bill is enacted after AB 819, in which case Section 2 of this bill shall not become operative.

CHAPTER 1597

An act to amend Sections 805, 2032, 2082, 2220, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2235, 2292, 2293, 2307, 2313, 2332, 2335, 2342, 2344, and 2354 of, and to add Sections 802.5, 803.5, 803.6, 2231, 2318, 2319, and 2337 to, the Business and Professions Code, to amend Section 43.8 of the Civil Code, and to add Sections 11371, 11372, 11373, 11373.3, 11529, 12529, 12529.5, and 12529.7 to the Government Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. The 1989–90 Regular Session of the Legislature declares that the physician discipline system administered by the board's Division of Medical Quality is inadequate to protect the health, safety, and welfare of the people of California against incompetent or impaired physicians.

It is, therefore, the intent of the Legislature to restructure the physician discipline system of the Medical Board of California in order to give it authority to act quickly in extreme cases to impose interim protective measures or final sanctions short of license revocation or suspension; more information from a variety of enhanced reporting sources and increased public outreach; procedures which afford a fair review and hearing by an experienced administrative law judge without excessive delay; procedures to ensure a high quality hearing; and enhanced resources to finance such a system in the interests of protecting the people of California. It is therefore the intent of the Legislature to improve the discipline system of licensed physicians and allied health professionals by creating a more expeditious and efficient adjudicatory system and providing it the adequate resources for its performance. It is also the intent of the Legislature that the pay scales for investigators of the Medical Board of California be equivalent to the pay scales for special investigative agents of the Department of Justice, in order to attract and retain experienced investigators.

SEC. 2. Section 802.5 is added to the Business and Professions Code, to read:

802.5. (a) When a coroner receives information that is based on findings that were reached by, or documented and approved by a board-certified or board-eligible pathologist indicating that a death may be the result of a physician's or podiatrist's gross negligence or incompetence, a report shall be filed with the Medical Board of California or the California Board of Podiatric Medicine. The initial report shall include the name of the decedent, date and place of death, attending physicians or podiatrists, and all other relevant information available. The initial report shall be followed, within 90

days, by copies of the coroner's report, autopsy protocol, and all other relevant information.

(b) The report required by this section shall be confidential. No coroner, physician and surgeon, or medical examiner, nor any authorized agent, shall be liable for damages in any civil action as a result of his or her acting in compliance with this section. No board-certified or board-eligible pathologist, nor any authorized agent, shall be liable for damages in any civil action as a result of his or her providing information under subdivision (a).

SEC. 3. Section 803.5 is added to the Business and Professions Code, to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California and the California Board of Podiatric Medicine of any filings against a licensee of either board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the alleged facts.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

SEC. 4. Section 803.6 is added to the Business and Professions Code, to read:

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the Medical Board of California or the California Board of Podiatric Medicine, as applicable, where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the board.

SEC. 5. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) "Peer review body" includes:

(A) A medical or professional staff of any licensed health care facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare program as an ambulatory surgical center.

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a nonprofit hospital service plan regulated under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(C) Any medical, psychological, dental, or podiatric professional society having as members at least 25 percent of the eligible

licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class which functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, podiatrist, clinical psychologist, or dentist.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of staff privileges, membership, or employment" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, when the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct which is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any health care facility shall file an 805 report with the relevant agency whenever any of the following actions are taken as a result of a determination of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

In addition to the duty to report as set forth in paragraphs (1), (2), and (3), the peer review body also has a duty to report under this section a licentiate's resignation or leave of absence from membership, staff, or employment following notice of an impending investigation based on information indicating medical disciplinary

cause or reason.

The 805 report shall be filed within 30 days after the effective date of the denial, termination, restriction, resignation, or leave of absence or after the exhaustion of administrative procedures, without regard to any filing for judicial review.

An 805 report shall also be filed within 30 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

In those instances where another peer review body is required to file an 805 report, a health care service plan or nonprofit hospital service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason.

(c) The reporting required herein shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976. The Medical Board of California, the Board of Osteopathic Examiners, and the Board of Dental Examiners shall disclose reports as required by Section 805.5.

An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(d) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(e) An intentional failure to make a report pursuant to this section is a public offense punishable by a fine not to exceed ten thousand dollars ($10,000).

(f) A failure by the administrator of any peer review body or the chief executive officer or administrator of any health care facility who is designated to transmit a report pursuant to this section whether or not the failure is intentional is punishable by a civil penalty not exceeding five thousand dollars ($5,000) per violation

payable to the board with jurisdiction over the licensee in any action brought by the Attorney General.

SEC. 6. Section 2032 of the Business and Professions Code is amended to read:

2032. "Person" means any individual, partnership, corporation, or other organization, or any combination thereof, except that only natural persons shall be licensed under this chapter.

SEC. 7. Section 2082 of the Business and Professions Code is amended to read:

2082. Each application shall include the following:

(a) A diploma issued by an approved medical school. The requirements of the school shall have been at the time of granting the diploma in no degree less than those required under this chapter or by any preceding medical practice act at the time that the diploma was granted. In lieu of a diploma, the applicant may submit evidence satisfactory to the Division of Licensing of having possessed the same.

(b) An official transcript or other official evidence satisfactory to the division showing each approved medical school in which a resident course of professional instruction was pursued covering the minimum requirements for certification as a physician and surgeon, and that a diploma and degree were granted by the school.

(c) Such other information concerning the professional instruction and preliminary education of the applicant as the division may require.

(d) An affidavit showing to the satisfaction of the division that the applicant is the person named in each diploma and transcript that he or she submits, that he or she is the lawful holder thereof, and that the diploma or transcript was procured in the regular course of professional instruction and examination without fraud or misrepresentation.

(e) Fingerprint cards from the applicant in order to establish the identity of the applicant and in order to determine whether the applicant has a record of any criminal convictions in this state or in any other jurisdiction, including foreign countries. The information obtained as a result of the fingerprinting of the applicant shall be used in accordance with Section 11105 of the Penal Code, and to determine whether the applicant is subject to denial of licensure under the provisions of Division 1.5 (commencing with Section 475) and Section 2221.

SEC. 8. Section 2220 of the Business and Professions Code is amended to read:

2220. Except as otherwise provided by law, the Division of Medical Quality may take action against all persons guilty of violating this chapter. The division shall enforce and administer this article as to physician and surgeon certificate holders, and the division shall have all the powers granted in this chapter for these purposes including, but not limited to:

(a) Investigating complaints from the public, from other licensees, from health care facilities, or from a division of the board

that a physician and surgeon may be guilty of unprofessional conduct.

(b) Investigating the circumstances of practice of any physician and surgeon where there have been any judgments, settlements, or arbitration awards requiring the physician and surgeon or his or her professional liability insurer to pay an amount in damages in excess of a cumulative total of thirty thousand dollars ($30,000) with respect to any claim that injury or damage was proximately caused by the physician's and surgeon's error, negligence, or omission.

(c) Investigating the nature and causes of injuries from cases which shall be reported of a high number of judgments, settlements, or arbitration awards against a physician and surgeon.

SEC. 9. Section 2224 of the Business and Professions Code is amended to read:

2224. The Division of Medical Quality may delegate the authority under this chapter to conduct investigations and inspections and to institute proceedings to the executive director of the board or such other personnel as set forth in Section 2020, but shall not delegate its authority to take final disciplinary action against a licensee as provided in Section 2227 and other provisions of this chapter, and may not delegate any authority of the Senior Assistant Attorney General of the Health Quality Enforcement Section, and may not delegate any powers vested in the administrative law judges Office of Administrative Hearings, as designated in Section 11371 of the Government Code.

SEC. 10. Section 2225 of the Business and Professions Code is amended to read:

2225. Notwithstanding Section 2263 and any other provision of law making a communication between a physician and surgeon or a podiatrist and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted under this chapter. Members of the board, the Senior Assistant Attorney General of the Health Quality Enforcement Section, and the California Board of Podiatric Medicine, employees, agents, and representatives of the board, and the Senior Assistant Attorney General of the Health Quality Enforcement Section shall keep in confidence during the course of investigations, the names of any patients whose records are reviewed and may not disclose or reveal, except as is necessary during the course of an investigation, those names unless and until proceedings are instituted. The board's and the Senior Assistant Attorney General of the Health Quality Enforcement Section's authority to examine records of patients in the office of a physician and surgeon or a podiatrist is limited to records of patients who have complained to the board about that licensee.

Waiver of privileges shall not apply to investigations under Section 2297 relating to mental illness.

SEC. 11. Section 2226 of the Business and Professions Code is amended to read:

2226. The Division of Medical Quality or the Senior Assistant Attorney General of the Health Quality Enforcement Section may inspect a licensed general or specialized hospital and require reports from them to determine if the hospital has adopted and is complying with the provisions of Sections 2282 and 2283. They may inspect medical staff and patient hospital medical records subject to the provisions of Section 2225. Notwithstanding Section 2224, the division's authority under this section shall be delegated only to a licensed physician and surgeon.

SEC. 12. Section 2227 of the Business and Professions Code is amended to read:

2227. (a) A licensee whose matter has been heard by the Division of Medical Quality, by a medical quality review committee or a panel of the committee, or by an administrative law judge as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the division.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

(3) Be placed on probation upon order of the division.

(4) Be publicly reprimanded by the division.

(5) Have any other action taken in relation to discipline as the division or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board.

SEC. 13. Section 2228 of the Business and Professions Code is amended to read:

2228. The authority of the Division of Medical Quality, a committee of the Division of Allied Health Professions, or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of such training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the division or administrative law judge.

(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the division. If such an examination is ordered, the division shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where

appropriate.

(d) Providing the option of alternative community service in cases other than violations relating to quality of care, as defined by the Division of Medical Quality.

SEC. 14. Section 2229 of the Business and Professions Code is amended to read:

2229. (a) Protection of the public shall be the highest priority for the Division of Medical Quality, a medical quality review committee, the California Board of Podiatric Medicine, and administrative law judges in exercising its disciplinary authority.

(b) In exercising its disciplinary authority the Division of Medical Quality, Board of Podiatric Medicine, a medical quality review committee or panel thereof, or an administrative law judge, shall, wherever possible, take action as is calculated to aid in the rehabilitation of the licensee, or where, due to lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

(c) It is the intent of the Legislature that the division, the enforcement program, and committees shall seek out those licensees who have demonstrated deficiencies in competency and then take those actions as are indicated, with priority given to those measures, including further education, restrictions from practice or other means that will remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall be paramount.

SEC. 15. Section 2230 of the Business and Professions Code is amended to read:

2230. All proceedings against a licensee for unprofessional conduct or applicant for licensure for unprofessional conduct or cause shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall be prosecuted by the Senior Assistant Attorney General of the Health Quality Enforcement Section.

SEC. 16. Section 2231 is added to the Business and Professions Code, to read:

2231. An administrative law judge as designated in Section 11371 of the Government Code may utilize the procedures in Section 11515 of the Government Code concerning any matters which may be officially or judicially noticed.

SEC. 17. Section 2235 of the Business and Professions Code is amended to read:

2235. Upon referral from the division, the Senior Assistant Attorney General of the Health Quality Enforcement Section shall initiate action against any licensee who obtains a certificate by fraud or misrepresentation, including a reciprocity certificate which is based upon a certificate or license obtained by fraud or mistake. The division shall take action against any licensee whose certificate was issued by mistake.

SEC. 18. Section 2292 of the Business and Professions Code is

amended to read:

2292. (a) A physician may be ordered to undergo a professional competency examination if, after investigation and review by a medical expert designated by the division, there is reasonable cause to believe that the physician is unable to practice medicine with reasonable skill and safety to patients. Reasonable cause shall be demonstrated by one or more of the following: (1) a single incident of gross negligence; (2) a pattern of inappropriate prescribing; (3) an act of incompetence or negligence causing death or serious bodily injury; or (4) a pattern of substandard care.

(b) Upon referral from the division, the matter shall be drafted and presented by the Senior Assistant Attorney General of the Health Quality Enforcement Section or his or her designee by way of a written petition detailing the reasonable cause. The petition shall contain all conclusions and facts upon which the presumption of reasonable cause is based. A copy of the petition shall be served on the physician who shall have the opportunity to file written opposition to the petition within 45 days after service. Service of the petition and any orders shall be in accordance with the methods of service authorized by subdivision (c) of Section 11505 of the Government Code.

(c) The petition may be considered by the Division of Medical Quality, or the division may assign the petition for consideration to a panel of a medical quality review committee, formed pursuant to Section 2323.

(d) The division or a committee panel shall review the petition and any opposition paper from the physician, or the division or panel may hold a hearing in accordance with the provisions of the Administrative Procedure Act to determine if reasonable cause exists, as specified in subdivision (a). The physician shall have the right to be represented at that hearing by the person of his or her choice. If the division or panel is satisfied that reasonable cause exists as to the circumstances specified in subdivision (a), the division or panel shall issue an order compelling the physician to undergo an examination of professional competency as measured by community standards. For purposes of this section, "community standards" means the statewide standards of the community of licensees. Failure to comply with the order duly served on the physician shall constitute unprofessional conduct for purposes of disciplinary proceedings.

SEC. 19. Section 2293 of the Business and Professions Code is amended to read:

2293. (a) The professional competency examination shall be in the form of an oral clinical examination to be administered by three physician examiners selected by the division or its designee, who shall test for medical knowledge specific to the physician's specialty or specific suspected deficiency. The examination shall be tape recorded.

(b) A failing grade from two of the examiners shall constitute a

failure of an examination. In the event of a failure, the board shall supply a true and correct copy of a tape of the examination to the unsuccessful examinee.

(c) Within 45 days following receipt of the tape of the examination, a physician who fails the examination may request a hearing before the administrative law judge as designated in Section 11371 of the Government Code to determine whether he or she is entitled to take a second examination.

(d) If the physician timely requests a hearing concerning the right to reexamination under subdivision (c), the hearing shall be held in accordance with the Administrative Procedure Act. Upon a finding that the examination or procedure is unfair or that one or more of the examiners manifest bias towards the examinee, a reexamination shall be ordered.

(e) If the examinee fails the examination and is not afforded the right to reexamination, the division may take action pursuant to Section 2230 by directing that an accusation be filed charging the examinee with incompetency under subdivision (d) of Section 2234. The modes of discipline are set forth in Sections 2227 and 2228.

(f) Findings and conclusions reported by the examiners may be received in the administrative hearing on the accusation. The passing of the examination shall constitute prima facie evidence of present competence in the area of coverage of the examination.

(g) Competency examinations shall be conducted under a uniform examination system, and for that purpose the division may make arrangements with organizations furnishing examination material as deemed desirable.

SEC. 20. Section 2307 of the Business and Professions Code is amended to read:

2307. A person whose certificate has been revoked or suspended or who has been placed on probation may petition the Division of Medical Quality for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods have elapsed from the effective date of the decision ordering that disciplinary action:

(a) At least three years for reinstatement of a license revoked for unprofessional conduct, except that the division, a medical quality review committee or panel thereof, or the administrative law judge as designated in Section 11371 of the Government Code may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(b) At least two years for early termination of probation of three years or more.

(c) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

The petition shall state such fact as may be required by the division. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed by the

board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

The petition may be heard by the division, or the division may assign the petition to an administrative law judge as designated in Section 11371 of the Government Code or a medical quality review committee for hearing by a panel composed of seven members specifically constituted for this purpose. The panel shall consist of four physicians, one nonphysician licentiate of a healing arts board, one public member, and one member who may be either a public member or a nonphysician licentiate of a healing arts board. For the purposes of that hearing, five members of a panel shall constitute a quorum. If for any reason, a seven-member panel from one committee cannot be assigned, members from other committees may be assigned to the panel for the purpose of the hearing.

The division, a medical quality review committee or panel thereof, or the administrative law judge as designated in Section 11371 of the Government Code hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the division, a medical quality review committee or panel thereof, or the administrative law judge as designated in Section 11371 of the Government Code finds necessary.

The division, a medical quality review committee or panel thereof, or the administrative law judge as designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may impose those terms and conditions deemed necessary.

No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The division may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

This section is applicable to and may be carried out by the California Board of Podiatric Medicine. In lieu of two verified recommendations from physicians and surgeons, the petition shall be accompanied by at least two verified recommendations from podiatrists licensed by the board who have personal knowledge of the activities of the petitioner since the date the disciplinary penalty was imposed.

(d) Nothing in this section shall be deemed to alter Sections 822 and 823 of the Business and Professions Code.

SEC. 21. Section 2313 of the Business and Professions Code is amended to read:

2313. The Division of Medical Quality shall report annually to the

Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders sought by the board or the division to enjoin licensees pursuant to Sections 125.7, 125.8 and 2311, the circumstances in each case which prompted the board or division to seek that injunctive relief, and whether a restraining order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board or a division against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances, and the total number and types of actions taken against licensees for unprofessional conduct resulting from cases referred by the State Department of Health Services pursuant to Section 14124 of the Welfare and Institutions Code, relating to suspension of provider status for state medical assistance.

(c) Information relative to the performance of the division, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of calls resulting in complaint forms being sent to complainants and number of forms returned; number of Section 805 reports by type; coroner reports received; referrals from other agencies, listed under each agency respectively; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the division and court review, respectively; number of cases in process more than six months from receipt by the division of information concerning the relevant acts to the filing of an accusation; average and median time in processing complaints from original receipt of complaint by the division for all cases at each stage of discipline and court review, respectively; number of persons in diversion, and number successfully completing diversion programs and failing to do so, respectively; number of licensees subject to interim suspension or subjected to interim practice limitations pending final discipline, respectively; probation violation reports and probation revocation filings and dispositions; number of petitions for reinstatement and their dispositions; and caseloads of investigators for original cases and for probation cases, respectively.

"Action," for purposes of this section, includes proceedings brought by, or on behalf of, the division against licensees for unprofessional conduct which have not been finally adjudicated, as well as disciplinary actions taken against licensees.

SEC. 22. Section 2318 is added to the Business and Professions Code, to read:

2318. In addition to any immunity afforded by Sections 43.8 and 47 of the Civil Code, if applicable, any person, including, but not limited to, a physician and surgeon, hospital, health facility as defined in Section 1250 of the Health and Safety Code, nursing home,

convalescent home, peer review body as defined in Section 805, medical society, professional association, patient, nurse, or other healing arts licensee who provides information to the board, to the California Board of Podiatric Medicine, or to the Department of Justice indicating that a board licensee may be guilty of unprofessional conduct or may be impaired because of drug or alcohol abuse or mental illness, shall not be liable for any damages in any civil action on account of the communication of that information to the board. The immunities afforded by this section shall not affect the availability of any absolute privilege which may be afforded by Section 47 of the Civil Code.

SEC. 23. Section 2319 is added to the Business and Professions Code, to read:

2319. (a) The board shall set as a goal the improvement of its disciplinary system by January 1, 1992, so that an average of no more than six months will elapse from the receipt of complaint to the completion of an investigation.

(b) Notwithstanding subdivision (a), the goal for cases which, in the opinion of the board, involve complex medical or fraud issues or complex business or financial arrangements should be no more than one year to investigate.

SEC. 24. Section 2332 of the Business and Professions Code is amended to read:

2332. Committees shall have the following authority and duties:

(a) To review the quality of medical care provided by physicians and surgeons.

(b) To act upon all matters assigned to it by the Division of Medical Quality or the Senior Assistant Attorney General of the Health Quality Enforcement Section and those other matters within the jurisdiction of a committee which it finds warrant action. Among its assignments, a committee may create physician peer counseling panels to provide review, education, and assistance to individual physicians, as assigned by the division, to strengthen various aspects of their practices, including the appropriate prescribing of drugs. The physician peer counseling panels shall include outside medical experts chosen by the division. Physicians under review shall participate on a voluntary basis and the records and proceedings shall be confidential and shall not be subject to discovery or subpoena.

(c) To inspect general and special hospitals pursuant to Section 2226.

(d) Where grounds for disciplinary action are found by the Attorney General to exist after the completion of investigations under this section, to hold a hearing pursuant to Section 2230. Hearings shall be conducted by the division, a committee or a panel of a committee, or an administrative law judge as designated in Section 11371 of the Government Code sitting alone.

(e) At the completion of a hearing, upon a finding of unprofessional conduct, to take appropriate disciplinary or remedial

action pursuant to Sections 2227, 2228, 2229, and 2335.

(f) To convene a panel to hear a petition for reinstatement or modification of penalty as assigned by the division pursuant to Section 2307.

SEC. 25. Section 2335 of the Business and Professions Code is amended to read:

2335. (a) Within 30 days of the conclusion of any hearing which is conducted by a medical quality review committee or panel thereof or administrative law judge as designated in Section 11371 of the Government Code, the committee, panel, or the administrative law judge shall render its decision in the matter.

(b) A decision by a committee or panel thereof or the administrative law judge as designated in Section 11371 of the Government Code shall constitute a proposed decision to the division or, when appropriate to the Board of Podiatric Medicine, except for interim decisions by an administrative law judge as designated in Section 11371 of the Government Code which shall be final interim decisions. The proposed decision shall be subject to the same procedure as a proposed decision of an administrative law judge under Section 11517 of the Government Code.

(c) The division or, when appropriate, the Board of Podiatric Medicine shall review all decisions of committees, panels, or the administrative law judge as designated in Section 11371 of the Government Code, except for interim decisions. The division or, when appropriate, the Board of Podiatric Medicine shall comment on the appropriateness of the decisions and shall promulgate uniform disciplinary guidelines for particular violations.

SEC. 26. Section 2337 is added to the Business and Professions Code, to read:

2337. Notwithstanding any other provision of law, superior court review of a decision revoking, suspending or restricting a license shall take preference over all other civil actions in the matter of setting the case for hearing or trial. The hearing or trial in the matter shall be set no later than 180 days from the filing of the action. Further continuance shall be granted only on a showing of good cause.

SEC. 27. Section 2342 of the Business and Professions Code is amended to read:

2342. One or more diversion evaluation committees is hereby created in the state to be established by the division. Each committee shall be composed of five persons appointed by the division.

Each committee shall have the following composition:

(a) Three physicians and surgeons licensed under this chapter. The division in making its appointments shall give consideration to recommendations of medical associations and local medical societies and shall consider, among others, where appropriate, the appointment of physicians and surgeons who have recovered from impairment or who specialize in psychiatry or who have knowledge and expertise in the management of impairment.

(b) One member nominated by medical quality review committees who is not a licensed physician and surgeon or a member of a medical quality review committee.

(c) One member not licensed as a physician and surgeon.

Each person appointed to a committee shall have experience or knowledge in the evaluation or management of persons who are impaired due to alcohol or drug abuse, or due to physical or mental illness.

It shall require the affirmative vote of four members of the division to appoint a person to a committee. Each appointment shall be at the pleasure of the division for a term not to exceed four years. In its discretion the division may stagger the terms of the initial members appointed.

SEC. 28. Section 2344 of the Business and Professions Code is amended to read:

2344. Three members of a committee, at least one of whom shall be a public member with expertise or experience with the treatment of substance abuse and addiction, shall constitute a quorum for the transaction of business at any meeting. Any action requires the majority vote of the committee.

SEC. 29. Section 2354 of the Business and Professions Code is amended to read:

2354. Each physician and surgeon who requests participation in a diversion program shall agree to cooperate with the treatment program designed by a committee. Any failure to complete successfully a treatment program or an acceptable substitute program may result in the filing of an accusation for discipline which may include any acts giving rise to the original diversion.

SEC. 30. Section 43.8 of the Civil Code is amended to read:

43.8. In addition to the privilege afforded by Section 47, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of the communication of information in the possession of such person to any hospital, hospital medical staff, veterinary hospital staff professional society, medical, dental, podiatric school, or veterinary school, professional licensing board or division, committee or panel of such licensing board, the Senior Assistant Attorney General of the Health Quality Enforcement Section appointed under Section 12529 of the Government Code, peer review committee, quality assurance committees established in compliance with Sections 4070 and 5624 of the Welfare and Institutions Code, or underwriting committee described in Section 43.7 when such communication is intended to aid in the evaluation of the qualifications, fitness, character, or insurability of a practitioner of the healing or veterinary arts. The immunities afforded by this section and by Section 43.7 shall not affect the availability of any absolute privilege which may be afforded by Section 47.

SEC. 31. Section 11371 is added to the Government Code, to read:

11371. (a) The Director of the Office of Administrative Hearings

shall designate a list of administrative law judges who have a demonstrated knowledge or experience in conducting hearings involving discipline actions brought against licentiates of the Medical Board of California. The director shall give preference to administrative law judges who participate in continuing education courses, as determined by the director in consultation with the Division of Medical Quality of the Medical Board of California, that furthers their knowledge of medical issues relevant to those proceedings. The judges on this list shall be given preference for cases involving medical discipline of health care professionals and shall be exclusively used for the adjudication of interim remedies as provided under Section 11529. In designating those administrative law judges who shall qualify to hear those cases, the director shall ensure the list is sufficient to provide at least one available administrative law judge for each of the Office of Administrative Hearings' hearing sites around the state.

(b) If the director finds that the administrative law judges designated in subdivision (a) are unable to hear medical quality cases in a timely manner, he or she may appoint existing administrative law judges, temporarily, to the list designated in subdivision (a).

SEC. 32. Section 11372 is added to the Government Code, to read:

11372. (a) Except as provided in subdivision (b), all adjudicative hearings and proceedings relating to the discipline or reinstatement of licensees of the Medical Board of California, including licensees of allied health agencies within its jurisdiction, which are heard pursuant to the Administrative Procedure Act, shall be conducted by an administrative law judge as designated in Section 11371, sitting alone if the case is so assigned by the agency filing the charging document or, except for proceedings related to interim orders, by the Division of Medical Quality, the appropriate allied health agency, a medical quality review committee or panel thereof sitting with an administrative law judge as designated in Section 11371. Where a medical quality review committee or panel thereof hears the matter, a five-member panel formed pursuant to Sections 2323 and 2324 of the Business and Professions Code may preside in any adjudicatory hearing other than a petition for reinstatement, as provided for in Section 2307 of the Business and Professions Code. An administrative law judge designated in Section 11371 may alternatively adjudicate those cases and, where a medical quality review committee panel adjudicates, render all legal rulings and conclusions of law. If an administrative law judge as designated in Section 11371 presides over the matter with a body referred to in this section, he or she shall render all legal rulings during the hearing, and may comment on the findings of fact and proposed discipline or order.

(b) Proceedings relating to interim orders shall be heard in accordance with Section 11529.

SEC. 33. Section 11373 is added to the Government Code, to read:

11373. (a) All adjudicative hearings and proceedings conducted by an administrative law judge as designated in Section 11371 or

medical quality review committee for final discipline shall be conducted under the terms and conditions set forth in the Administrative Procedure Act, except as herein provided, and orders by an administrative law judge as designated in Section 11371 or medical quality review committee shall be proposed decisions to the Division of Medical Quality and to the California Board of Podiatric Medicine except as provided by subdivision (b).

(b) Except as herein provided, contested orders of the Medical Quality Review Committees and Administrative Law Judges, as designated in Section 11371, shall be governed by Section 11517. Upon receipt of the proposed decision, the Division of Medical Quality or the California Board of Podiatric Medicine shall have 90 days to review the proposed decision and may, in its discretion, upon a majority vote, except as required in Section 2013 of the Business and Professions Code for revocations of licensure, take any action authorized in Section 11517. Where the division or the California Board of Podiatric Medicine does not act within 90 days after receipt of the proposed decision, the decision shall be final and subject to review under Section 2337 of the Business and Professions Code and Section 11523. Upon a decision by the division or the board not to adopt the proposed decision, and unless the licensee stipulates to proceed without the transcript regarding the proposed decision, the proposed decision hearing transcript and record shall be submitted to the division or the California Board of Podiatric Medicine within 30 days. However, receipt of the material after 30 days shall not preclude review. The division or the California Board of Podiatric Medicine has 90 calendar days from the date after receipt of the transcript to render a final decision, unless the licensee stipulates to waive the transcript, then the final decision shall be rendered 90 calendar days from the receipt of the hearing record, except that it may extend the time by no more than 30 additional days.

SEC. 34. Section 11373.3 is added to the Government Code, to read:

11373.3. The Office of Administrative Hearings shall provide facilities and support personnel for the review committee panel and shall assess the Medical Board of facilities and personnel, where used to adjudicate cases involving the Medical Board of California.

SEC. 35. Section 11529 is added to the Government Code, to read:

11529. (a) The Division of Medical Quality and the California Board of Podiatric Medicine, and the administrative law judge as designated in subdivision (a) of Section 11371, sitting alone, may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, and that permitting the licensee to continue to engage in the profession for which the license was issued will

endanger the public health, safety, or welfare.

(b) All orders authorized by this section shall be issued only after a hearing conducted pursuant to subdivision (d), unless it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice. Except as provided in subdivision (c), the licensee shall receive at least 15 days' prior notice of the hearing, which notice shall include affidavits and all other information in support of the order.

(c) If an interim order is issued without notice, the same body or administrative law judge, as designated in subdivision (a) of Section 11371, who issued the order without notice shall cause the licensee to be notified of the order, including affidavits and all other information in support of the order by a 24-hour delivery service. That notice shall also include the date of the hearing on the order, which shall be conducted in accordance with the requirement of subdivision (d), not later than 20 days from the date of issuance. The order shall be dissolved unless the requirements of subdivision (a) are satisfied.

(d) For the purposes of the hearing conducted pursuant to this section, the licentiate shall, at a minimum, have the following rights:

(1) To be represented by counsel.

(2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the record.

(3) To call, examine, and cross-examine witnesses.

(4) To present and rebut evidence determined to be relevant.

(5) To present oral argument.

(e) The Division of Medical Quality shall hear any petition requesting an interim order and conduct the hearing pursuant to subdivision (d), or may, in its sole discretion, delegate any such matter to be heard by an administrative law judge as designated in subdivision (a) of Section 11371.

(f) In all cases where an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 15 days of the date in which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved.

Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date that matter is submitted, or the board shall nullify the interim order previously issued, unless good cause can be shown by the division for a delay.

(g) Where an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the division or the administrative law judge as designated in subdivision (a) of Section 11371, or by the California Board of Podiatric Medicine including

findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(h) Notwithstanding the fact that interim orders issued pursuant to this section are not issued after a hearing as otherwise required by this chapter, interim orders so issued shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure. The relief which may be ordered shall be limited to a stay of the interim order. Interim orders issued pursuant to this section are final interim orders and, if not dissolved pursuant to subdivision (c) or (f), may only be challenged administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided for in the Business and Professions Code.

SEC. 36. Section 12529 is added to the Government Code, to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees, including the Board of Podiatric Medicine, of the Division of Allied Health Professions and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12629.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees of the Division of Allied Health Professions, with the intent that the expenses be proportionally shared as to services rendered.

SEC. 37. Section 12529.5 is added to the Government Code, to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality

Enforcement Section shall assign attorneys to assist the division and the board in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the board, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the board, to provide consultation and related services and engage in case review with the board's investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the board, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the board, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, board, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the board shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, as appropriate in consultation with the senior assistant.

SEC. 38. Section 12529.7 is added to the Government Code, to read:

12529.7. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall annually make a written report to the Attorney General, who shall report by October 1, to the Governor, the Legislature, including the appropriate legislative budget and policy committees, the Allied Health Agencies and the Medical Board of California the disposition and status of each case referred to the Department of Justice's Health Quality Enforcement Section during the prior fiscal year.

SEC. 39. This act shall be known and may be cited as the Medical Judicial Procedure Improvement Act.

SEC. 40. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those costs.

SEC. 41. Notwithstanding Section 40 of this act, the Medical Board of California shall reimburse the State Mandates Claims Fund

for any costs which may be incurred due to the mandates contained in this act.

CHAPTER 1598

An act to amend Sections 1822 and 1827.5 of the Probate Code, relating to conservatorship.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

NOTE: See Stats. 1990, Ch. 79 for SECTION 1.

SEC. 2. Section 1827.5 of the Probate Code is amended to read:

1827.5. (a) In the case of any proceeding to establish a limited conservatorship for a person with developmental disabilities, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings and recommendations to the court. The report shall include a description of the proposed limited conservatee's specific areas, nature, and degree of disability. The findings and recommendations of the regional center are not binding upon the court.

In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed limited conservatee, and is not a public entity, the regional center shall include a recommendation in its report concerning the suitability of the petitioners to meet the needs of the proposed limited conservatee.

(b) In the case of any proceeding to establish a general conservatorship for a person with developmental disabilities, the regional center, with the consent of the proposed conservatee, may prepare an assessment as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. If an assessment is prepared, the regional center shall submit its findings and recommendations to the court. The report shall include a description of the proposed conservatee's specific areas, nature, and degree of disability. The findings and recommendations of the regional center are not binding upon the court.

In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed conservatee, and is not a public entity, the regional center shall include a recommendation in

its report concerning the suitability of the petitioner to meet the needs of the proposed conservatee.

(c) At least five days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:

(1) The proposed conservatee.

(2) The attorney, if any, for the proposed conservatee.

(3) If the petitioner is not the proposed conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.

(4) Such other persons as the court orders.

NOTE: See Stats. 1990, Ch. 79 for SEC. 4.

SEC. 5. Section 4 of this bill incorporates amendments to Section 1827.5 of the Probate Code proposed by both this bill and SB 2427. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 1827.5 of the Probate Code, and (3) this bill is enacted after SB 2427, in which case Section 1827.5 of the Probate Code, as amended by SB 2427, shall remain operative only until the operative date of this bill, at which time Section 4 of this bill shall become operative, and Section 3 of this bill shall not become operative.

CHAPTER 1599

An act to amend Section 164.50 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 164.50 of the Streets and Highways Code is amended to read:

164.50. (a) The department, in cooperation with local transportation officials, shall develop guidelines to implement the commuter and urban rail transit program. The guidelines shall define the criteria to identify and prioritize projects which can be implemented not later than June 30, 2001, and will provide an efficient system of commuter and urban rail transit services in the state.

(b) The department shall submit the guidelines to the commission by July 1, 1990. The commission shall adopt the guidelines by September 1, 1990.

(c) Allocations for commuter rail and urban rail transit projects shall not exceed 50 percent of the project cost, excluding the amount of any federal funds and funds received under the Clean Air and Transportation Improvement Act of 1990 (Part 11.5 (commencing

with Section 99600) of Division 10 of the Public Utilities Code) for the project.

(d) "Commuter passenger rail" has the same meaning as the term "commuter service" as defined in the Rail Passenger Service Act (45 U.S.C. Sec. 502 (9)), and as described in Penn Central Transp. Co. Discontinuance, 338 ICC 318.

(e) "Urban rail transit" means passenger rail, including exclusive public mass transportation guideways, which is not defined as either intercity rail or commuter rail.

(f) Commuter and urban rail projects eligible for funding are those specified in Sections 164.51 and 164.52.

CHAPTER 1600

An act to amend Section 51101 of the Government Code, to amend Sections 4475, 4475.5, and 4604 of the Public Resources Code, and to add Section 38101.5 to the Revenue and Taxation Code, relating to timber and timberland.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 51101 of the Government Code is amended to read:

51101. The Legislature hereby finds and declares all of the following:

(a) The forest resources and timberlands of this state, together with the forest products industry, contribute substantially to the health and stability of the state's economy and environment by providing high quality timber, employment opportunities, regional economic vitality, resource protection, and aesthetic enjoyment.

(b) The state's increasing population threatens to erode the timberland base and diminish forest resource productivity through pressures to divert timberland to urban and other uses and through pressures to restrict or prohibit timber operations when viewed as being in conflict with nontimberland uses.

(c) A continued and predictable commitment of timberland, and of investment capital, for the growing and harvesting of timber are necessary to ensure the long-term productivity of the forest resource, the long-term economic viability of the forest products industry, and long-term stability of local resource-based economies.

SEC. 2. Section 4475 of the Public Resources Code is amended to read:

4475. The director, with the approval of the Director of General Services, may enter into a contract for prescribed burning with (1) the owner or any other person who has legal control of any property

or (2) any public agency with regulatory or natural resource management authority over any property which is included within any wildland for any of the following purposes, or any combination thereof:

(a) Prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels or removal of unwanted, unused, or deteriorated structures that are fire hazards by burning such fuels or structures.

(b) Watershed management.

(c) Range improvement.

(d) Vegetation management.

(e) Forest improvement.

(f) Wildlife habitat improvement.

No contract may be entered into pursuant to this section unless the director determines that the public benefits estimated to be derived from the prescribed burning pursuant to the contract will be equal to or greater than the foreseeable damage that could result from the prescribed burning.

SEC. 3. Section 4475.5 of the Public Resources Code is amended to read:

4475.5. (a) The state may assume a proportionate share of the costs of site preparation and prescribed burning conducted pursuant to this article on wildlands other than wildlands under the jurisdiction of the federal government. The state's share of those costs shall bear the same ratio to the total costs of the operation as the public benefits bear to all public and private benefits to be derived from the prescribed burning operation, as estimated and determined by the director. The state's share of the costs may exceed 90 percent of the total costs of the operation only if the director determines that no direct private economic benefits will accrue or will be utilized by a person that owns or controls any property under contract pursuant to Section 4475.

(b) The board shall adopt regulations establishing standards to be used by the director in determining the state's share of such costs and in determining whether, pursuant to Section 4475, the public benefits of a prescribed burning operation will equal or exceed the foreseeable damage therefrom.

(c) The determination of public and private benefits pursuant to this section shall reflect any substantial benefit to be derived from accomplishing any of the purposes specified in Section 4475 and the prevention of degradation of air quality.

(d) All or part of such costs to be borne by the person contracting with the department may be met by the value of materials, services, or equipment furnished by that person directly, or furnished by that person pursuant to an agreement with a private consultant or contractor, or furnished by a combination of both means, that are determined by the department to be suitable for the preparation for, and the conduct of, the prescribed burning operation.

SEC. 4. Section 4604 of the Public Resources Code is amended to

read:

4604. (a) The department shall provide an initial inspection of the area in which timber operations are to be conducted within 10 days from the date of filing of the timber harvesting plan or nonindustrial timber management plan, or a longer period as may be mutually agreed upon by the department and the person submitting the plan, except that the inspection need not be made pursuant to the filing of a timber harvesting plan if the department determines that the inspection would not add substantive information that is necessary to enforce this chapter. The department shall provide for inspections, as needed, as follows:

(1) During the period of commencement of timber operations.

(2) When timber operations are well under way.

(3) Following completion of timber operations.

(4) At any other times as determined to be necessary to enforce this chapter.

(b) (1) The Department of Fish and Game, the regional water quality control boards, or the State Water Resources Control Board, if accompanied by Department of Forestry and Fire Protection personnel and after 24-hour advance notification is given to the landowner, may enter and inspect land during normal business hours at any time after commencement of timber harvest plan activities on the land and before the director issues a report of satisfactory completion of stocking pursuant to Section 4588 or at any time before the end of the first winter period following the filing of a work completion report pursuant to Section 4585, whichever is later. Any member of the inspection party may utilize whatever measurement and evaluation devices, including, but not limited to, photographic equipment and temperature measurement devices, as determined to be necessary, when participating in an inspection of an area pursuant to subdivision (a) or after commencement of timber harvesting plan activities pursuant to this subdivision.

(2) Photographs taken during inspections shall be clearly labeled as to time, date, and location and shall be the property of the department and part of the inspection record. The inspection record shall be subject to all provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) This subdivision is not a limitation upon the authority of any agency to inspect pursuant to any other provision of law.

(c) This section shall become operative on January 1, 1991, or on the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first.

SEC. 5. Section 38101.5 is added to the Revenue and Taxation Code, to read:

38101.5. (a) The Legislature finds and declares that the forest resources and timberlands of the state are among the most valuable of the natural renewable resources of the state and that there is great

concern throughout the state relating to their protection, restoration, and utilization.

(b) The Legislature further finds and declares that the forest resources and timberlands of the state produce timber and other forest products, recreational opportunities, regional economic vitality, employment opportunities, and aesthetic enjoyment while providing watershed protection and maintaining fisheries and wildlife.

(c) The Legislature further finds and declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, employment opportunities, regional economic vitality, and recreational opportunities alike in this and future generations.

(d) The Legislature further finds that it is not the intent of the Legislature by the enactment of this part to take private property for public use without payment of just compensation in violation of the California and United States Constitutions.

CHAPTER 1601

An act to repeal and add Chapter 4 (commencing with Section 4351) of Division 2 of the Public Utilities Code, relating to gas distribution systems, and making an appropriation therefor.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 4351) of Division 2 of the Public Utilities Code is repealed.

SEC. 2. Chapter 4 (commencing with Section 4351) is added to Division 2 of the Public Utilities Code, to read:

CHAPTER 4. ENFORCEMENT OF FEDERAL PIPELINE SAFETY STANDARDS FOR MOBILEHOME PARK OPERATORS

4351. As used in this chapter:

(a) "Gas" means natural or manufactured gas, except propane, used for light, heat, or power.

(b) "Distribution system" means a system of pipes within a mobilehome park operated by a person or corporation, other than a public utility, which is connected to a meter or other measuring device under the control of a privately owned or publicly owned public utility, for purposes of distribution of gas by the operator of a mobilehome park to the tenants of the mobilehome park who are

the actual users of the gas furnished through the meter or device to the operator by the public utility.

(c) "Operator" is a mobilehome park owner or operator who maintains and operates a master-metered natural gas distribution system.

(d) "Department" means the Department of Housing and Community Development.

(e) "Local enforcement agency" means the city, county, or city and county which has assumed the responsibility for the enforcement of Chapter 2 (commencing with Section 18300) of Part 2.1 of Division 13 of the Health and Safety Code.

(f) "Federal law" or "federal pipeline standards" means the federal Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. Sec. 1671 et seq.) and the regulations contained in Parts 190, 191, and 192 of Title 49 of the Code of Federal Regulations.

4352. The commission shall undertake a gas safety inspection and enforcement program for mobilehome parks with distribution systems to ensure compliance with the federal pipeline standards by mobilehome park operators within the state. The commission may adopt rules, which shall be at least as stringent as the federal law in order to protect the health and safety of mobilehome park residents. Nothing in this chapter prohibits the commission from adopting more stringent standards than those in the federal law.

4353. (a) The commission shall conduct an initial inspection of each distribution system which shall take place on the mobilehome park premises. The inspection shall consist of all of the following:

(1) An inspection of the adequacy of the operator's operation and maintenance plan.

(2) The information contained in the required annual report.

(3) The records of leak surveys and repairs, corrosion control, and cathodic protection of the system.

(4) If deemed appropriate from the review of the records, a physical inspection of the mobilehome park's distribution system to ensure compliance with the federal law; the applicable sections of Commission General Order 112 relating to mobilehome park distribution systems, excluding the sections relating to gas transmission facilities, LNG facilities, and gathering lines; and any rules and orders adopted by the commission pursuant to this chapter.

(b) If the operator demonstrates compliance pursuant to subdivision (a), the distribution system shall thereafter be inspected once every five years. The subsequent inspections shall consist of the elements specified in subdivision (a). However, the commission may institute an inspection at any time if it determines, following a review of a subsequent annual report or receipt of a complaint, that an additional inspection is necessary.

(c) If the operator does not demonstrate compliance pursuant to subdivision (a), the distribution system may be inspected on an annual basis until such time as there is compliance and, thereafter, shall be inspected as specified in subdivision (b).

(d) If upon the initial inspection or any subsequent inspection, the commission determines the presence of a gas leak or other safety hazard in the distribution system which poses a significant or immediate danger to the health and safety of the park residents, the distribution system may be inspected more frequently until the condition is corrected. Once corrected, the park shall be inspected as specified in subdivision (b).

(e) The commission may require an operator to provide necessary assistance to commission inspectors in surveying or uncovering portions of a distribution system for purposes of inspection, verification, and testing.

4354. (a) Every operator shall prepare and submit to the commission annually a report on the distribution system.

(b) The report shall be submitted to the commission at the same time the annual application for a permit to operate the mobilehome park is submitted to the department or the local enforcement agency.

(c) The report shall be prepared using a form required by the commission and shall contain the information the commission finds necessary to carry out the intent of this chapter. In developing the form, the commission shall consult with interested parties to ensure that the form contains no more than the necessary and appropriate information to carry out the intent of this chapter.

(d) Upon receipt of the report, the commission shall examine the report for violations of (1) applicable federal pipeline safety laws or regulations or (2) any applicable commission rules or orders. The commission may inspect the operator's distribution system for the purpose of verifying whether or not a violation of federal or state pipeline safety laws or regulations has occurred or is occurring.

4355. Except as specified in Section 4356, after each inspection, the commission shall furnish the operator, or a representative designated in writing by the operator, with a written copy of the inspection report within 30 days of the inspection, and the report shall indicate any violations of applicable federal or state pipeline safety laws or regulations. Upon receipt of a report indicating a safety violation, the operator shall file, within 30 days, a written response with the commission which acknowledges receipt of the report and specifies a compliance plan for correcting the safety violations, including, if appropriate, a timetable for completing necessary repairs or improvements to the distribution system. The commission shall furnish copies of inspection reports indicating safety violations, and responses to these reports, to the United States Department of Transportation and to the department.

4356. (a) If the commission determines the presence of a gas leak or other safety hazard in the distribution system which poses a significant or immediate danger to the health and safety of the park residents, it shall notify the United States Department of Transportation, the department, the utility serving the distribution system, and the operator, who shall provide notice to the affected

tenants in the park.

(b) Upon receipt of the notice from the commission, the department or the local enforcement agency shall require the operator to take immediate steps to correct and repair the gas leak or other hazard. The commission may direct the serving gas corporation to terminate service at the master meter if an operator does not comply with this requirement. The cost of repair or corrective actions shall be borne by the operator.

4357. (a) Any operator who fails to file the report required by Section 4354 or to comply with a directive of the department or the local enforcement agency pursuant to Section 4356 is subject to a civil penalty of not more than one thousand dollars ($1,000) for each day that the failure to file the report or respond to the directive continues, but not to exceed two hundred thousand dollars ($200,000) for a single violation or related series of violations. The commission shall enforce this subdivision.

(b) Nothing in this chapter affects the tort liability of the operator of a distribution system.

4358. (a) The commission shall establish a uniform billing per therm surcharge to be paid by operators with distribution systems subject to this chapter on natural gas purchased for distribution to their tenants. The surcharge shall be designed to recover the commission's costs of the mobilehome park safety inspection and enforcement program required by this chapter.

(b) The commission shall require gas corporations to adjust their rates on an annual basis to recover the surcharge specified in subdivision (a). Mobilehome parks which are served by publicly owned public utilities shall be inspected at the request of the serving utility. However, publicly owned public utilities which serve mobilehome parks subject to this chapter shall only be required to adjust their gas rates to recover the surcharge specified in subdivision (a) when a mobilehome park within the utility's jurisdiction is inspected.

(c) Notwithstanding any other provision of law or local ordinance, rule, regulation, or initiative measure, the operator shall be entitled to recover the surcharge collected pursuant to subdivision (a) from its tenants on a monthly basis. However, the charge to any tenant shall not exceed 30 cents per month for the period from July 1, 1991, until July 1, 1992, and shall not exceed 25 cents per month after that date.

(d) All surcharge fees collected by gas corporations pursuant to this section shall be forwarded to the commission, as required by the commission. All surcharge fees collected pursuant to this section shall be deposited in the Public Utilities Commission Utilities Reimbursement Account in the General Fund, which fees shall be used, upon appropriation, for purposes of this chapter.

4359. The commission may adopt rules and orders to carry out this chapter.

SEC. 3. (a) This act shall become operative on July 1, 1991,

except subdivision (c) of Section 4354, and Section 4359 of the Public Utilities Code, which shall become operative on January 1, 1991.

(b) It is the intent of the Legislature, if this bill and AB 3327 are both chaptered and become effective on or before January 1, 1991, and this bill is chaptered after AB 3327, that the provisions of Chapter 4 (commencing with Section 4351), as added to Division 2 of the Public Utilities Code by this bill, and Chapter 4 (commencing with Section 4351), as added to Division 2 of the Public Utilities Code by AB 3327, form a single, unified Chapter 4 (commencing with Section 4351) of Division 2 of the Public Utilities Code.

Therefore, if both this bill and AB 3327 are chaptered and this bill is chaptered last, this bill does not prevail over AB 3327, and the provisions of both bills shall become operative in a single, unified Chapter 4 (commencing with Section 4351) of Division 2 of the Public Utilities Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. The sum of three hundred fifty thousand dollars ($350,000) is hereby appropriated to the Public Utilities Commission from the Public Utilities Commission Utilities Reimbursement Account in the General Fund for the purposes of implementing this act.

CHAPTER 1602

An act to add Sections 39003 and 39120 to the Education Code, and to add Section 21151.8 to the Public Resources Code, relating to hazardous materials.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 39003 is added to the Education Code, to read:

39003. The governing board of a school district shall not approve a project involving the acquisition of a schoolsite by a school district unless all of the following occur:

(a) The lead agency, as defined in Section 21067 of the Public

Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency preparing the environmental impact report or negative declaration has consulted with the city in which the proposed schoolsite is located, or with the county in which the proposed schoolsite is located if the proposed site is in an unincorporated area, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed schoolsite which might reasonably be anticipated to emit hazardous air emissions.

(c) The governing board of the school district makes either of the following written findings:

(1) Consultation identified none of the facilities specified in subdivision (b).

(2) The facilities specified in subdivision (b) exist, but the health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution officer, hazardous air emissions may also mean emissions into the ambient air from any substance identified in Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

(3) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" has the same meaning as

defined in Section 25114 of the Health and Safety Code.

SEC. 2. Section 39120 is added to the Education Code, to read:

39120. The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency complies with the same requirements specified in Section 39003 for schoolsite acquisition.

SEC. 3. Section 21151.8 is added to the Public Resources Code, to read:

21151.8. (a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless the environmental impact report or negative declaration includes information which is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) As used in this section:

(1) "Hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" has the same meaning as defined in subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" has the same meaning as defined in Section 25114 of the Health and Safety Code.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1603

An act to add Division 9.7 (commencing with Section 10900) to the Health and Safety Code, to amend Section 11166 of, and to add Section 11165.13 to, the Penal Code, relating to substance abuse.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Division 9.7 (commencing with Section 10900) is added to the Health and Safety Code, to read:

DIVISION 9.7. PERINATAL SUBSTANCE ABUSE

CHAPTER 1. STATE ADMINISTRATION

10900. By July 1, 1991, the Health and Welfare Agency shall develop and disseminate a model needs assessment protocol for pregnant and postpartum substance abusing women in conjunction with the appropriate professional organizations in the areas of hospital administration, substance abuse prevention and treatment, social services, public health, and appropriate state agencies, including the State Department of Social Services, the State Department of Health Services, State Department of Developmental Services, and the State Department of Alcohol and Drug Programs. This model may be utilized by hospitals and counties pursuant to Section 10901.

CHAPTER 2. COUNTY ADMINISTRATION

10901. (a) Each county shall establish protocols between county health departments, county welfare departments, and all public and private hospitals in the county, regarding the application and use of an assessment of the needs of, and a referral for, a substance exposed infant to a county welfare department pursuant to Section 11165.13 of the Penal Code.

(b) The assessment of the needs shall be performed by a health practitioner, as defined in Section 11165.8 of the Penal Code, or a medical social worker. The needs assessment shall be performed before the infant is released from the hospital.

(c) The purpose of the assessment of the needs is to do all of the following:

(1) Identify needed services for the mother, child, or family,

including, where applicable, services to assist the mother caring for her child and services to assist maintaining children in their homes.

(2) Determine the level of risk to the newborn upon release to the home and the corresponding level of services and intervention, if any, necessary to protect the newborn's health and safety, including a referral to the county welfare department for child welfare services.

(3) Gather data for information and planning purposes.

CHAPTER 3. MISCELLANEOUS

10902. It is the intent of the Legislature that funding for this chapter be provided in the annual Budget Act.

SEC. 2. Section 11165.13 is added to the Penal Code, to read:

11165.13. For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 10901 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to county welfare departments and not to law enforcement agencies.

SEC. 3. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or who reasonably

suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, videotape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation, for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties and no person making such a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article.

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately

or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relate solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. Sections 2 and 3 of this act shall become operative on July 1, 1991.

CHAPTER 1604

An act to add Sections 3206 and 3206.5 to the Public Resources Code, relating to oil and gas, and making an appropriation therefor.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 3206 is added to the Public Resources Code, to read:

3206. (a) The operator of any well that does not produce oil or natural gas, or has not been utilized for injection purposes, for a continuous six-month period during any consecutive five-year period prior to or after January 1, 1991, shall do one of the following:

(1) File with the supervisor an indemnity or cash bond in the sum of five thousand dollars ($5,000) for each well. The bond shall be conditioned as provided in Section 3204.

(2) File with the supervisor a blanket indemnity or cash bond in the sum of one hundred thousand dollars ($100,000) to cover all of those wells. The bond shall be conditioned as provided in Section 3205.

(3) File with the supervisor an annual fee of one hundred dollars ($100) for each of those wells.

(b) All fees received under this section shall be deposited in the Hazardous and Idle-Deserted Well Abatement Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the Hazardous and Idle-Deserted Well Abatement Fund are hereby continuously appropriated to the department for expenditure without regard to fiscal year, to mitigate a hazardous or potentially hazardous condition by well plugging and abandonment.

(c) Failure to file, for any well, the bond or fee required under this section shall be conclusive evidence of desertion of the well, permitting the supervisor to order the well abandoned.

(d) Nothing in this section shall be construed to prohibit a local agency from collecting a fee for regulation of wells.

SEC. 2. Section 3206.5 is added to the Public Resources Code, to read:

3206.5. (a) Any city or county may request from the supervisor a list of those wells within its jurisdiction which have not continuously produced oil or natural gas, or have not been utilized continuously for injection purposes for a six-month period during any consecutive 10-year period prior to or after January 1, 1991.

(b) After receiving the list from the supervisor, the city or county may identify idle wells within its jurisdiction which it has determined, based on a competent, professional evaluation, have no reasonable expectation of being reactivated, and formally request

the supervisor to make a determination whether the wells should be plugged and abandoned.

(c) Upon receiving the written request of a city or county, as specified in subdivision (b):

(1) The supervisor may, within 60 days of receiving a written request from a city or county, require the operator or operators to file a statement for each well outlining those reasons why the wells should not be plugged and abandoned.

(2) The supervisor shall, within 120 days of receiving a written request, make a determination as to whether any of these wells should be plugged and abandoned, pursuant to the criteria contained in this chapter.

(d) Failure of the operator to file, for any well, the statement required under this section shall be conclusive evidence of desertion of the well, thereby permitting the supervisor to order the well abandoned.

CHAPTER 1605

An act to add Section 20603.3 to the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 20603.3 is added to the Government Code, to read:

20603.3. (a) Notwithstanding Sections 20603.01, 20603.02, 20603.2, 20750.92, and 20750.93, the normal rate of contribution for patrol members for service rendered on and after July 1, 1991, shall be 8 percent of the compensation in excess of eight hundred sixty-three dollars ($863) per month paid to those members, 4 percent of this compensation shall be paid from surplus employer funds, subject to the following conditions:

(1) The state employer contribution shall be paid from surplus funds under Section 20760 prior to those funds being used to reduce member contributions in a fiscal year. If sufficient funds are not available in the surplus employer funds pursuant to Section 20760 to pay the full amount of employer contributions in any pay period, the state employer may apply any surplus funds toward the employer contribution for that pay period.

(2) If surplus employer funds pursuant to Section 20760 are insufficient to reduce the member contribution rate to 4 percent after the employer contributions are paid in a pay period, the member contribution shall be reduced to the lowest possible rate

with the remaining surplus funds.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. There is hereby appropriated from the Public Employees' Retirement Fund the sum of fifteen thousand dollars ($15,000) for expenditure to pay the costs of administering Section 20603.3 of the Government Code, which is enacted by this act.

CHAPTER 1606

An act to add Section 1917.006 to the Civil Code, relating to loans.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 1917.006 is added to the Civil Code, to read:

1917.006. For purposes of this chapter:

(a) "Shared appreciation loan" means, in addition to the meaning defined in Section 1917, a loan that obligates the borrower to pay to the lender contingent deferred interest pursuant to the loan documentation and that is made upon the security of an interest in real property that is an owner-occupied residence in compliance with all of the following conditions:

(1) The loan is made by, and all contingent deferred interest paid with respect to the loan is used by, a local public entity to provide financial assistance in the acquisition of housing that is affordable to persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(2) The loan is made or acquired with assets of the local public entity other than the proceeds of a bond meeting the requirements of Section 143 of the United States Internal Revenue Code of 1986.

(3) The loan documentation assures that the obligation to pay contingent deferred interest is subject to a superior right of the borrower, upon termination of the loan, to receive repayment of money paid by the borrower for purchase of the security property (including downpayment, installment payments of mortgage principal, escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the borrower) and money paid by the borrower for capital improvements to the security property, plus not less than the legal rate of interest on those cash payments.

(4) The loan documentation assures that the amount of contingent deferred interest shall not exceed that percentage of the appreciation in appraised fair market value of the security property that equals the local public entity's proportionate share of the total initial equity in the security property. The amount of the total initial equity and of the local public entity's share of the initial equity shall be agreed upon by the borrower and the local public entity at the time of executing the shared appreciation loan and shall include the local public entity's cash investment, the difference between the price of land provided by the local public entity and the fair market value of the land, the amount of fees waived by the local public entity, and the value of in-kind contributions made by or on behalf of the local public entity. Funds borrowed by the borrower, the repayment of which are secured by the security property, shall not be included in the calculation of total initial equity of the borrower.

(5) At least 30 days in advance of executing the loan documentation, the borrower receives full disclosure of the terms and conditions of the loan, including the economic consequences to the borrower of the obligation to pay contingent deferred interest.

(b) "Local public entity" means a city and county, or a housing authority or redevelopment agency of a city and county.

(c) "Owner-occupied residence" means real property containing one to four residential units at least one of which at the time the loan is made is, or is to be, occupied by the borrower.

CHAPTER 1607

An act to amend Section 130554 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 130554 of the Public Utilities Code is amended to read:

130554. The commission shall give priority to construction of the overall transit system authorized in Los Angeles County Transportation Commission Ordinance No. 16. No more than 30 percent of the cost of the initial segment of the Los Angeles Metro Rail project shall be obtained from rail transit revenues to be obtained from revenue sources authorized in Los Angeles County Transportation Commission Ordinance No. 16. Furthermore, the commission shall not issue bonds in excess of three hundred million dollars ($300,000,000) to fund the Los Angeles Metro Rail project. The bonds shall be repaid from commission rail transit revenues. In the event that any bond proceeds are used for the system authorized

by Los Angeles County Transportation Commission Ordinance No. 16, the Los Angeles County Transportation Commission and the Southern California Rapid Transit District shall report to the Legislature by December 31, 1986, on the status and funding of the Los Angeles Metro Rail project, including cost overruns, federal commitments and pledges for future funding, and local revenue sources.

SEC. 2. Section 1 of this act shall become operative on January 1, 1990, if legislation which assigns to a single public agency responsibility for all rail transit construction within the County of Los Angeles is enacted during the 1989 portion of the 1989–90 Regular Session.

If that legislation is not enacted during that 1989 portion, Section 1 of this act shall become operative on February 1, 1990.

CHAPTER 1608

An act to amend Sections 12463.3 and 53895 of, to amend Sections 12463.1, 53890, and 53892, as amended by Chapter 1523 of the Statutes of 1984, to repeal Sections 12463.1, as amended by Chapter 647 of the Statutes of 1979, 53890, as added by Chapter 1521 of the Statutes of 1949, and 53892, as amended by Chapter 212 of the Statutes of 1969, of the Government Code, to amend Sections 33080, as amended by Section 5 of Chapter 1523 of the Statutes of 1984, 33080.1, as amended by Chapter 1523 of the Statutes of 1984, 33080.4, as amended by Section 7 of Chapter 1140 of the Statutes of 1989, 33080.5, 33080.6, and 33606, as amended by Section 10 of Chapter 1523 of the Statutes of 1984 of, and to repeal Sections 33080, as added by Section 5.5 of Chapter 1523 of the Statutes of 1984, 33080.1, as amended by Chapter 206 of the Statutes of 1981, 33080.4, as amended by Section 8 of Chapter 1140 of the Statutes of 1989, 33080.4, as added by Section 3.5 of Chapter 1111 of the Statutes of 1987, and 33606, as added by Chapter 797 of the Statutes of 1977, of the Health and Safety Code, and to amend Sections 7200.1, 7202.5, and 7202.6 of the Revenue and Taxation Code, relating to local agencies.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 12463.1 of the Government Code, as amended by Chapter 1523 of the Statutes of 1984, is amended to read:

12463.1. The Controller shall appoint an advisory committee consisting of seven local governmental officers to assist him or her in developing complete and adequate records.

Whenever, in the opinion of the advisory committee and the Controller, the public welfare demands that the reports of the

financial transactions of a district other than a school district be published, the Controller shall notify the district that reports of its financial transactions are required to be furnished to him or her pursuant to Article 9 (commencing with Section 53890) of Chapter 4 of Part 1 of Division 2 of Title 5. A public entity, agency, board, transportation planning agency designated by the Secretary of the Business, Transportation, and Housing Agency pursuant to Section 29532, or commission provided for by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, and a nonprofit corporation as defined herein, shall be deemed a district within the meaning of this section. The Controller shall compile and publish these reports pursuant to Section 12463.

For purposes of this section, "nonprofit corporation" shall mean any nonprofit corporation (1) formed in accordance with the provisions of a joint powers agreement to carry out functions specified in the agreement; (2) that issued bonds, the interest on which is exempt from federal income taxes, for the purpose of purchasing land as a site for, or purchasing or constructing, a building, stadium, or other facility, which is subject to a lease or agreement with a local public entity; or, (3) wholly owned by a public agency.

SEC. 2. Section 12463.1 of the Government Code, as amended by Chapter 647 of the Statutes of 1979, is repealed.

SEC. 3. Section 12463.3 of the Government Code is amended to read:

12463.3. On or before April 1 of each year, the Controller shall compile and publish annually reports of the financial transactions of each community redevelopment agency created pursuant to Division 24 (commencing with Section 33000) of the Health and Safety Code. The Controller shall publish this information for each project area of each redevelopment agency. The reports shall be made in the time, form, and manner prescribed by the Controller, after consultation with the Department of Housing and Community Development and the advisory committee created pursuant to Section 12463.1. The first report published pursuant to this section shall be for the 1984–85 fiscal year.

SEC. 4. Section 53890 of the Government Code, as amended by Chapter 1523 of the Statutes of 1984, is amended to read:

53890. As used in this article, "local agency" means any city, county, any district, and any community redevelopment agency required to furnish financial reports pursuant to Section 12463.1 or 12463.3.

SEC. 5. Section 53890 of the Government Code, as added by Chapter 1521 of the Statutes of 1949, is repealed.

SEC. 6. Section 53892 of the Government Code, as amended by Chapter 1523 of the Statutes of 1984, is amended to read:

53892. The report shall state:

(a) The aggregate amount of taxes levied and assessed against the taxable property in the local agency, which became due and payable

during the next preceding fiscal year.

(b) The aggregate amount of taxes levied and assessed against such property collected by or for, the local agency during the fiscal year.

(c) The aggregate income during the preceding fiscal year, a general statement of the sources of the income, and the amount received from each source.

(d) The total expenditures made by administrative departments during the preceding fiscal year, a general statement of the purposes of the expenditures, and the amounts expended by each department.

(e) The assessed valuation of all of the taxable property in the local agency as set forth on the assessment roll of the local agency equalized for the fiscal year, or, if the officers of the county in which the city or district is situated have collected for the city or district the general taxes levied by the city or district for the fiscal year, the assessed valuation of all taxable property in the city or district as set forth on the assessment rolls for the county equalized for the fiscal year.

(f) The information required by Section 53892.2, as of the end of the fiscal year.

(g) The approximate population at the close of the fiscal year and the population as shown by the last regular federal census.

(h) Other information which the Controller requires.

(i) Any other matters necessary to complete and keep current the statistical information on assessments, revenues and taxation, collected and compiled by any Senate or Assembly committee on revenue and taxation.

(j) In the case of cities, the information required by Section 53892.3.

(k) In the case of community redevelopment agencies, the information required by subdivisions (a), (b), and (d) of Section 33080.1 of the Health and Safety Code. The Controller shall forward the information required pursuant to subdivision (c) of Section 33080.1 of the Health and Safety Code to the Department of Housing and Community Development for publication pursuant to Section 33080.6 of the Health and Safety Code.

SEC. 7. Section 53892 of the Government Code, as amended by Chapter 212 of the Statutes of 1969, is repealed.

SEC. 7.5. Section 53895 of the Government Code is amended to read:

53895. (a) An officer of a local agency who fails or refuses to make and file his or her report within twenty days after receipt of a written notice of the failure from the Controller shall forfeit to the state:

(1) One thousand dollars ($1,000), in the case of a local agency with total revenue, in the prior year, of less than one hundred thousand dollars ($100,000), as reported in the Controller's annual financial reports.

(2) Two thousand five hundred dollars ($2,500) in the case of a

local agency with total revenue, in the prior year, of at least one hundred thousand dollars ($100,000) but less than two hundred fifty thousand dollars ($250,000), as reported in the Controller's annual financial reports.

(3) Five thousand dollars ($5,000) in the case of a local agency with total revenue, in the prior year, of at least two hundred fifty thousand dollars ($250,000), as reported in the Controller's annual financial reports.

(b) Upon the request of the Controller, the Attorney General shall prosecute an action for the forfeiture in the name of the people of the State of California.

SEC. 8. Section 33080 of the Health and Safety Code, as amended by Section 5 of Chapter 1523 of the Statutes of 1984, is amended to read:

33080. Every redevelopment agency shall file with the Controller within six months of the end of the agency's fiscal year a copy of the report required by Section 33080.1. The reports shall be made in the time, format, and manner prescribed by the Controller after consultation with the department.

SEC. 9. Section 33080 of the Health and Safety Code, as added by Section 5.5 of Chapter 1523 of the Statutes of 1984, is repealed.

SEC. 10. Section 33080.1 of the Health and Safety Code, as amended by Chapter 1523 of the Statutes of 1984, is amended to read:

33080.1. Every redevelopment agency shall present an annual report to its legislative body within six months of the end of the agency's fiscal year. The annual report shall contain all of the following:

(a) An independent financial audit report for the previous fiscal year. "Audit report" means an examination of, and opinion on, the financial statements of the agency which present the results of the operations and financial position of the agency, including all financial activities with moneys required to be held in a separate Low and Moderate Income Housing Fund pursuant to Section 33334.3. This audit shall be conducted in accordance with generally accepted auditing standards and the rules governing audit reports promulgated by the State Board of Accountancy. The audit report shall also include an opinion of the agency's compliance with laws, regulations, and administrative requirements governing activities of the agency.

However, the legislative body may elect to omit from inclusion in the audit report any distinct activity of the agency which is funded exclusively by the federal government and which is subject to audit by the federal government.

(b) A fiscal statement for the previous fiscal year which contains the information required pursuant to Section 33080.5.

(c) A description of the agency's activities affecting housing and displacement which contains the information required by Section 33080.4.

(d) Any other information which the agency believes useful to

explain its programs, including, but not limited to, the number of jobs created as a result of its activities.

SEC. 11. Section 33080.1 of the Health and Safety Code, as amended by Chapter 206 of the Statutes of 1981, is repealed.

SEC. 12. Section 33080.4 of the Health and Safety Code, as amended by Section 7 of Chapter 1140 of the Statutes of 1989, is amended to read:

33080.4. For the purposes of compliance with subdivision (c) of Section 33080.1, the description of the agency's activities shall contain the following information regardless of whether each activity is funded exclusively by the state or federal government, for each project area and for the agency overall:

(a) Pursuant to Section 33413, the total number of family and elderly households, including separate subtotals of the numbers of households for persons and families of low or moderate income and very low income households, that were displaced or moved from their dwelling units as part of a redevelopment project of the agency during the previous fiscal year.

(b) Pursuant to Section 33413.5, the total number of family and elderly households, including separate subtotals of the numbers of households for persons and families of low or moderate income and very low income households, that the agency estimates will be displaced or will move from their dwellings as part of a redevelopment project of the agency during the present fiscal year and the date of adoption of a replacement housing plan for each project area subject to Section 33413.5.

(c) The total number of dwelling units housing persons and families of low and moderate income and very low income households, respectively, which have been destroyed or removed from the low- or moderate-income housing market during the previous fiscal year as part of a redevelopment project of the agency, specifying the number of those units which are not subject to Section 33413.

(d) The total numbers of agency-assisted dwelling units which were constructed, rehabilitated, acquired, or subsidized during the previous fiscal year for occupancy at an affordable housing cost by elderly persons and families, but only if the units are restricted by agreement or ordinance for occupancy by the elderly, and by persons and families of low or moderate income and very low income households, respectively, specifying those units which are not currently so occupied, those units which have replaced units destroyed or removed pursuant to subdivision (a) of Section 33413, and the length of time any agency-assisted units are required to remain available at affordable costs.

(e) The total numbers of new or rehabilitated units subject to paragraph (2) of subdivision (b) of Section 33413, including separate subtotals of the number originally affordable to and currently occupied by, elderly persons and families, but only if the units are restricted by agreement or ordinance for occupancy by the elderly,

and by persons and families of low or moderate income and very low income households, respectively, and the length of time these units are required to remain available at affordable costs.

(f) The status and use of the Low and Moderate Income Housing Fund created pursuant to Section 33334.3, including information on the use of this fund for very low income households, lower income households, and persons and families of low or moderate income, respectively. If the Low and Moderate Income Housing Fund is used to subsidize the cost of onsite or offsite improvements, then the description of the agency's activities shall include the number of housing units affordable to persons and families of low or moderate income which have been directly benefited by the onsite or offsite improvements.

(g) A compilation of the annual reports obtained by the agency under Section 33418 including identification of the number of units occupied by persons and families of low or moderate income, lower income households, and very low income households, respectively, as those terms are defined in Division 31 (commencing with Section 50000), and identification of projects in violation of law or any agreements in relation to affordable units.

(h) Any other information which the agency believes useful to explain its housing programs, including, but not limited to, housing for persons and families of other than low and moderate income.

"Elderly," as used in this section, has the same meaning as specified in Section 50067.

SEC. 13. Section 33080.4 of the Health and Safety Code, as amended by Section 8 of Chapter 1140 of the Statutes of 1989, is repealed.

SEC. 14. Section 33080.4 of the Health and Safety Code, as added by Section 3.5 of Chapter 1111 of the Statutes of 1987, is repealed.

SEC. 15. Section 33080.5 of the Health and Safety Code is amended to read:

33080.5. For the purposes of compliance with subdivision (b) of Section 33080.1, the fiscal statement shall contain the following information:

(a) The amount of outstanding indebtedness of the agency and each project area.

(b) The amount of tax increment property tax revenues generated in the agency and in each project area.

(c) The amount of tax increment revenues paid to a taxing agency pursuant to subdivision (b) of Section 33401.

(d) The financial transactions report required pursuant to Section 53891 of the Government Code.

(e) Any other fiscal information which the agency believes useful to describe its programs.

SEC. 16. Section 33080.6 of the Health and Safety Code is amended to read:

33080.6. On or before April 1 of each year, the department shall compile and publish reports of the activities of redevelopment

agencies for the previous fiscal year, based on the information reported pursuant to subdivision (c) of Section 33080.1 and reporting the types of findings made by agencies pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 33334.2, including the date of the findings. The department's compilation shall also report on the project area mergers reported pursuant to Section 33488. The department shall publish this information for each project area of each redevelopment agency. These reports may also contain the biennial review of relocation assistance required by Section 50460. The first report published pursuant to this section shall be for the 1984–85 fiscal year. For fiscal year 1987–88 and succeeding fiscal years, the report shall contain a list of those project areas which are not subject to the requirements of Section 33413.

The department shall send a copy of its report to each redevelopment agency for which information was reported pursuant to Section 33080.1 for the fiscal year covered by the report.

SEC. 17. Section 33606 of the Health and Safety Code, as amended by Section 10 of Chapter 1523 of the Statutes of 1984, is amended to read:

33606. An agency shall adopt an annual budget containing all of the following specific information, including all activities to be financed by the Low and Moderate Income Housing Fund established pursuant to Section 33334.3:

(a) The proposed expenditures of the agency.

(b) The proposed indebtedness to be incurred by the agency.

(c) The anticipated revenues of the agency.

(d) The work program for the coming year, including goals.

(e) An examination of the previous year's achievements and a comparison of the achievements with the goals of the previous year's work program.

The annual budget may be amended from time to time as determined by the agency. All expenditures and indebtedness of the agency shall be in conformity with the adopted or amended budget.

When the legislative body is not the redevelopment agency, the legislative body shall approve the annual budget and amendments of the annual budget of the agency.

SEC. 18. Section 33606 of the Health and Safety Code, as added by Chapter 797 of the Statutes of 1977, is repealed.

SEC. 19. Section 7200.1 of the Revenue and Taxation Code is amended to read:

7200.1. As used in this part, "redevelopment agency" means a redevelopment agency created pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, and as defined in Section 33003 of the Health and Safety Code.

SEC. 20. Section 7202.5 of the Revenue and Taxation Code is amended to read:

7202.5. In addition to the provisions set forth in subparagraphs (A) to (H), inclusive, of paragraph (8) of subdivision (a) of Section 7202, a city, county, or city and county sales and use tax ordinance

may provide that any person subject to a sales and use tax under the city's, county's, or city and county's ordinance shall be entitled to credit against the payment of taxes due under that ordinance the amount of sales and use taxes due to the redevelopment agency pursuant to Section 7202.6.

SEC. 21. Section 7202.6 of the Revenue and Taxation Code is amended to read:

7202.6. (a) The redevelopment agency of any city, county, or city and county which has adopted a sales and use tax ordinance pursuant to this part and containing the provision described in Section 7202.5 may adopt a sales and use tax ordinance in accordance with the provisions of this part, provided the redevelopment agency's sales and use tax is levied under an ordinance including the following provisions:

(1) A provision imposing a tax for the privilege of selling tangible personal property at retail upon every retailer in the project area at the rate of 1 percent or less of the gross receipts of the retailer from the sale of all tangible personal property sold by that person at retail in the project area, and a use tax of 1 percent or less of the purchase price upon the storage, use or other consumption of tangible personal property purchased from a retailer for storage, use or consumption in the project area. The rate of tax imposed by the ordinance shall not exceed the rate of tax imposed by the city, county, or city and county ordinance.

(2) Provisions identical to those contained in Part 1 (commencing with Section 6001), insofar as they relate to sales and use taxes, except that the name of the redevelopment agency as the taxing agency shall be substituted for that of the state (but the name of the redevelopment agency shall not be substituted for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 nor in the definition of that phrase in Section 6203) and that an additional seller's permit shall not be required if one has been or is issued to the seller under Section 6067.

(3) A provision that all amendments subsequent to the effective date of the enactment of Part 1 (commencing with Section 6001) relating to sales and use tax and not inconsistent with this part, shall automatically become a part of the sales and use tax ordinance of the agency.

(4) A provision that the agency shall contract prior to the operative date of the agency sales and use tax ordinance with the State Board of Equalization to perform all functions incident to the administration or operation of the sales and use tax ordinance of the agency which shall continue in effect so long as the county and the city within which the agency is located have operative sales and use tax ordinances enacted pursuant to this part.

(5) A provision that the storage, use or other consumption of tangible personal property, the gross receipts from the sale of which has been subject to sales tax under a sales and use tax ordinance enacted in accordance with this part by any city and county, county,

city or redevelopment agency in this state, shall be exempt from the tax due under this ordinance.

(6) A provision that the amount subject to tax shall not include the amount of any sales tax or use tax imposed by the State of California upon a retailer or consumer.

(7) A provision that there are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the project area and the city, county, or city and county in which the sale is made and directly and exclusively in the use of that aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

(8) A provision that, in addition to the exemptions provided in Sections 6366 and 6366.1, the storage, use, or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by those operators directly and exclusively in the use of that aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government is exempt from the use tax.

(b) The ordinance shall contain an enacting clause which states as follows: "The redevelopment agency of the (City, County, or City and County) of _____ does ordain as follows:" The ordinance shall be signed by the chairman of the agency and attested by the clerk or secretary of the agency, and shall take effect immediately upon its final passage. However, the ordinance shall become operative on the first day of the first calendar quarter commencing more than 180 days after adoption of the ordinance. In all other respects, the ordinance shall be introduced and passed, and notice given by publication, in the manner provided by law. A redevelopment agency whose governing body is other than the city council or the board of supervisors shall not adopt an ordinance pursuant to this section unless the city council or board of supervisors has first adopted a resolution consenting to the adoption of the ordinance by the agency.

SEC. 22. If both this bill and SB 2268 are enacted and become effective on or before January 1, 1991, and each bill amends Section 33080.4 of the Government Code, as amended by Section 7 of Chapter 1140 of the Statutes of 1989, and this bill is enacted after SB 2268, then 33080.4 of the Government Code, as amended by Section 12 of this bill, shall not become operative.

SEC. 23. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000),

reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1609

An act to amend Section 19618 of, and to amend and repeal Section 19613 of, the Business and Professions Code, relating to horseracing.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 19613 of the Business and Professions Code, as amended by Section 2 of Chapter 251 of the Statutes of 1990, is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting.

(b) Any association other than a fair which conducts a thoroughbred racing meeting shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount equivalent to 1.5 percent of the portion, and for a pension plan for backstretch personnel to be administered by the horsemen's organization, an amount equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization, 1 percent of the portion for a pension plan for backstretch personnel to be administered by the horsemen's organization. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's

organization for the respective breeds with the approval of the board.

Pursuant to this subdivision, amounts equivalent to 3 percent of the portion for the horsemen's organization shall be distributed to any thoroughbred horsemen's organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: 1 percent for administrative expenses and services rendered to their respective horsemen, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered by the thoroughbred horsemen's organizations.

(e) Any association other than a fair which conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount equal to its expenses, but not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings which do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

SEC. 2. Section 19613 of the Business and Professions Code, as added by Section 2.5 of Chapter 251 of the Statutes of 1990, is repealed.

SEC. 3. Section 19618 of the Business and Professions Code is amended to read:

19618. (a) Except as provided in Article 9.2 (commencing with Section 19605), no person licensed under this chapter to conduct a racing meeting shall pay or distribute to, or on behalf of, any horse owner, any agent, or person or organization representing any horse owner or owners, purses, or any other type of consideration to, or for, the benefit of horsemen, other than that expressly provided in this

chapter.

(b) Except as provided in Article 9.2 (commencing with Section 19605), no horse owner, any agent, or person or organization representing any horse owner or owners, shall receive, solicit, or obtain from any person licensed under this chapter to conduct a race meeting, purses, or any other type of consideration to, or for, the benefit of horsemen, other than that expressly provided in this chapter.

(c) No plaque, cup, tray, ribbon, trophy, or similar award given in recognition of achievement or special event is deemed to be consideration for the purpose of subdivisions (a) and (b).

(d) Subdivisions (a) and (b) do not apply to any payment by an association in connection with any match race or special racing event.

(e) Notwithstanding subdivision (a) or (b), or any other provision of law, the horsemen's organization which represents the horsemen participating in a racing meeting and a licensed racing association may enter into an agreement which provides for the division of, and sharing by the organization and the association of, the interest earned on the association's paymaster accounts during racing meetings conducted prior to, during, or subsequent to, 1990, if both of the following conditions are satisfied:

(1) The agreement is filed with the board.

(2) The share of earned interest allocated to the horsemen's organization is used exclusively for the benefit of horsemen, including, among other purposes, purses.

CHAPTER 1610

An act to amend Section 11998.1 of, and to repeal and add Section 11998.3 of, the Health and Safety Code, relating to drug and alcohol abuse.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 11998.1 of the Health and Safety Code is amended to read:

11998.1. It is the intent of the Legislature that the following long-term five-year goals be achieved:

(a) With regard to education and prevention of drug and alcohol abuse programs, the following goals:

(1) Drug and alcohol abuse education has been included within the mandatory curriculum in kindergarten and grades 1 to 12, inclusive, in every public school in California.

(2) Basic training on how to recognize, and understand what to do

about, drug and alcohol abuse has been provided to administrators and all teachers of kindergarten and grades 1 to 12, inclusive.

(3) All school counselors and school nurses have received comprehensive drug and alcohol abuse training.

(4) Each public school district with kindergarten and grades 1 to 12, inclusive, has appointed a drug and alcohol abuse advisory team of school administrators, teachers, counselors, students, parents, community representatives, and health care professionals, all of whom have expertise in drug and alcohol abuse prevention. The team coordinates with and receives consultation from the county alcohol and drug program administrators.

(5) Every school board member has received basic drug and alcohol abuse information.

(6) Each school district has a drug and alcohol abuse specialist to assist the individual schools.

(7) Each school in grades 7 to 12, inclusive, has student peer group drug and alcohol abuse programs.

(8) Every school district with kindergarten and grades 1 to 12, inclusive, has updated written drug and alcohol abuse policies and procedures including disciplinary procedures which will be given to every school employee, every student, and every parent.

(9) The California State University and the University of California have evaluated and, if feasible, established educational programs and degrees in the area of drug and alcohol abuse.

(10) Every school district with kindergarten and grades 1 to 12, inclusive, has an established parent teachers group with drug and alcohol abuse prevention goals.

(11) Every school district has instituted a drug and alcohol abuse education program for parents.

(12) Drug and alcohol abuse training has been imposed as a condition for teacher credentialing and license renewal, and knowledge on the issue is measured on the California Basic Education Skills Test.

(13) Drug and alcohol abuse knowledge has been established as a component on standardized competency tests as a requirement for graduation.

(14) Every school district has established a parent support group.

(15) Every school district has instituted policies which address the special needs of children who have been rehabilitated for drug or alcohol abuse problems and who are reentering school. These policies shall consider the loss of schooltime, the loss of academic credits, and the sociological problems associated with drug and alcohol abuse, its rehabilitation, and the educational delay it causes.

(16) The number of drug and alcohol abuse related incidents on school grounds has decreased by 20 percent.

(b) With regard to community programs, the following goals:

(1) Every community-based social service organization that receives state and local financial assistance has drug and alcohol abuse information available for clients.

(2) All neighborhood watch, business watch, and community conflict resolution programs have included drug and alcohol abuse prevention efforts.

(3) All community-based programs that serve schoolaged children have staff trained in drug and alcohol abuse and give a clear, drug- and alcohol-free message.

(c) With regard to drug and alcohol abuse programs of the media, the following goals:

(1) The state has established a comprehensive media campaign that involves all facets of the drug and alcohol abuse problem, including treatment, education, prevention, and intervention that will result in increasing the public's knowledge and awareness of the detrimental effects of alcohol and drug use, reducing the use of alcohol and drugs, and increasing healthy lifestyle choices.

(2) The department on a statewide basis, and the county board of supervisors or its designees at the local level, have:

(A) Assisted the entertainment industry in identifying ways to effectively use the entertainment industry to encourage lifestyles free of substance abuse.

(B) Assisted the manufacturers of drug and alcohol products in identifying ways to effectively use product advertising to discourage substance abuse.

(C) Assisted television stations in identifying ways to effectively use television programming to encourage lifestyles free of substance abuse.

(3) A statewide cooperative fundraising program with recording artists and the entertainment industry has been encouraged to fund drug and alcohol abuse prevention efforts in the state.

(d) With regard to drug and alcohol abuse health care programs, the following goals:

(1) The number of drug and alcohol abuse-related medical emergencies has decreased by 4 percent per year.

(2) All general acute care hospitals and AIDS medical service providers have provided information to their patients on drug and alcohol abuse.

(3) The Medical Board of California, the Psychology Examining Committee, the Board of Registered Nursing, and the Board of Behavioral Science Examiners have developed and implemented the guidelines or regulations requiring drug and alcohol abuse training for their licensees, and have developed methods of providing training for those professionals.

(e) With regard to private sector drug and alcohol abuse programs, the following goals:

(1) A significant percentage of businesses in the private sector have developed personnel policies that discourage drug and alcohol abuse and encourage supervision, training, and employee education.

(2) Noteworthy and publicly recognized figures and private industry have been encouraged to sponsor fundraising events for drug and alcohol abuse prevention.

(3) Every public or private athletic team has been encouraged to establish policies forbidding drug and alcohol abuse.

(4) The private sector has established personnel policies that discourage drug and alcohol abuse but encourage treatment for those employees who require this assistance.

(f) With regard to local government drug and alcohol abuse programs, the following goals:

(1) Every county has a five-year master plan to eliminate drug and alcohol abuse developed jointly by the county-designated alcohol and drug program administrators, reviewed jointly by the advisory boards set forth in paragraph (2), and approved by the board of supervisors. For those counties in which the alcohol and drug programs are jointly administered, the administrator shall develop the five-year master plan. To the degree possible, all existing local plans relating to drug or alcohol abuse shall be incorporated into the master plan.

(2) Every county has an advisory board on alcohol problems and an advisory board on drug programs. The membership of these advisory boards is representative of the county's population and is geographically balanced. To the maximum extent possible the county advisory board on alcohol problems and the county advisory board on drug programs will have representatives of the following:

(A) Law enforcement.

(B) Education.

(C) The treatment and recovery community, including a representative with expertise in AIDS treatment services.

(D) Judiciary.

(E) Students.

(F) Parents.

(G) Private industry.

(H) Other community organizations involved in drug and alcohol services.

(I) A representative of organized labor responsible for the provision of Employee Assistance Program services.

If any of these areas are not represented on the advisory bodies, the administrator designated in paragraph (1) shall solicit input from a representative of the nonrepresented area prior to the development of a master plan pursuant to paragraph (1).

(3) Every county public social service agency has established policies that discourage drug and alcohol abuse and encourage treatment and recovery services when necessary.

(4) Every local unit of government has an employee assistance program that addresses drug and alcohol abuse problems.

(5) Every local unit of government has considered the potential for drug and alcohol abuse problems when developing zoning ordinances and issuing conditional use permits.

(6) Every county master plan includes treatment and recovery services.

(6.5) Every county master plan includes specialized provisions to

ensure optimum alcohol and drug abuse service delivery for handicapped and disabled persons.

(7) Every local unit of government has been encouraged to establish an employee assistance program that includes the treatment of drug and alcohol abuse-related programs.

(8) Every local governmental social service provider has established a referral system under which clients with drug and alcohol abuse problems can be referred for treatment.

(9) Every county drug and alcohol abuse treatment or recovery program which serves women gives priority for services to pregnant women.

(10) Every alcohol and drug abuse program provides acquired immune deficiency syndrome (AIDS) information to all program participants.

(g) With regard to state and federal government drug and alcohol abuse programs, the following goals:

(1) The Department of Alcoholic Beverage Control has informed all alcohol retailers of the laws governing liquor sales and has provided training available to all personnel selling alcoholic beverages, on identifying and handling minors attempting to purchase alcohol.

(2) The Office of Criminal Justice Planning has required all applicants for crime prevention and juvenile justice and delinquency prevention funds to include drug and alcohol abuse prevention efforts in their programs.

(3) All county applications for direct or indirect drug and alcohol services funding from the department include a prevention component.

(4) The Superintendent of Public Instruction has employed drug and alcohol abuse school prevention specialists and assisted local school districts with the implementation of prevention programs.

(5) The State Department of Mental Health has staff trained in drug and alcohol abuse prevention who can assist local mental health programs with prevention efforts.

(6) The Department of the California Highway Patrol, as permitted by the United States Constitution, has established routine statewide sobriety checkpoints for driving while under the influence.

(7) The Department of Corrections and the Department of the Youth Authority have provided drug and alcohol abuse education and prevention services for all inmates, wards, and parolees. Both departments have provided drug and alcohol abuse treatment services for any inmate, ward, or parolee determined to be in need of these services, or who personally requests these services.

(8) The Department of Motor Vehicles has distributed prevention materials with each driver's license or certificate of renewal and each vehicle registration renewal mailed by the Department of Motor Vehicles.

(9) Federal prevention programs have been encouraged to follow the master plan.

(10) State licensing and program regulations for drug and alcohol abuse treatment programs have been consolidated and administered by one state agency.

(11) State treatment funding priorities have been included to specially recognize the multiple diagnosed client who would be eligible for services from more than one state agency.

(12) Every state agency has formalized employee assistance programs that include the treatment of drug and alcohol abuse-related problems.

(13) The state master plan includes specialized provisions to ensure optimum drug and alcohol abuse service delivery for handicapped and disabled persons.

(14) The Department of Commerce, in coordination with private industry, encourages the creation of employee alcohol and drug abuse prevention programs in the workplace or provides information to employees on treatment or recovery programs that are available to them.

(h) With regard to private sector direct service providers, the following goals:

(1) Drinking drivers programs have provided clear measurements of successful completion of the program to the courts for each court-ordered client.

(2) Sufficient drug and alcohol treatment and recovery services exist throughout the state to meet all clients' immediate and long-range needs.

(3) Each county to the extent possible provides localized alcohol and drug treatment and recovery services designed for individuals seeking assistance for polydrug abuse.

(4) Adequate nonresidential and residential services are available statewide for juveniles in need of alcohol or drug abuse services.

(5) Each provider of alcohol or drug services has been certified by the state.

(6) Drug and alcohol abuse treatment providers provide general acquired immune deficiency syndrome (AIDS) information during treatment.

(i) With regard to supply regulation and reduction in conjunction with drug and alcohol abuse, the following goals:

(1) The California National Guard supports federal, state, and local drug enforcement agencies in counternarcotic operations as permitted by applicable laws and regulations.

(2) Each county has a drug and alcohol abuse enforcement team, designated by the board of supervisors. This team includes all components of the criminal justice system. This team shall be responsible to the board of supervisors, shall coordinate with the drug and alcohol abuse advisory board and the county on all criminal justice matters relating to drug and alcohol abuse, and shall coordinate, and actively participate, with the county alcohol and drug program administrators throughout the development and implementation of the five-year master plan.

(3) The Office of Criminal Justice Planning, the Youth and Adult Correctional Agency, the Department of the California Highway Patrol, the Office of Traffic Safety, and the Department of Justice have established a state level drug and alcohol abuse enforcement team that includes representatives from all facets of criminal justice. The lead agency for the enforcement team has been designated by the Governor. This team advises the state and assists the local teams.

(4) The Office of Criminal Justice Planning, the Youth and Adult Correctional Agency, and the Department of Justice have, as a priority when determining training subjects, prevention seminars on drug and alcohol abuse. The Commission on Peace Officer Standards and Training has, as a priority when determining training subjects, drug and alcohol enforcement.

(5) The Department of the California Highway Patrol, as permitted by the United States Constitution, will in conjunction with establishing sobriety checkpoints statewide, assist local law enforcement agencies with the establishment of local programs.

(6) Counties with more than 10 superior court judgeships have established programs under which drug cases receive swift prosecution by well-trained prosecutors before judges who are experienced in the handling of drug cases.

(7) The courts, when determining bail eligibility and the amount of bail for persons suspected of a crime involving a controlled substance, shall consider the quantity of the substance involved when measuring the danger to society if the suspect is released.

(8) Drunk driving jails have been established that provide offender education and treatment during incarceration.

(9) All probation and parole officers have received drug and alcohol abuse training, including particular training on drug recognition.

(10) All parolees and persons on probation with a criminal history that involves drug or alcohol abuse have conditions of parole or probation that prohibit drug and alcohol abuse.

(11) The Judicial Council has provided training on drug and alcohol abuse for the judges.

(12) The courts, when sentencing offenders convicted of selling drugs, consider "street value" of the drugs involved in the underlying crime.

(13) Judges have been encouraged to include drug and alcohol abuse treatment and prevention services in sentences for all offenders. Judges are requiring, as a condition of sentencing, drug and alcohol abuse education and treatment services for all persons convicted of driving under the influence of alcohol or drugs.

(14) Juvenile halls and jails provide clients with information on drug and alcohol abuse.

(15) The estimated number of clandestine labs operating in California has decreased by 10 percent per year.

(16) Each local law enforcement agency has developed, with the schools, protocol on responding to school drug and alcohol abuse

problems.

(17) Every county has instituted a mandatory driving while under the influence presentence offender evaluation program.

SEC. 1.5. Section 11998.1 of the Health and Safety Code is amended to read:

11998.1. It is the intent of the Legislature that the following long-term five-year goals be achieved:

(a) With regard to education and prevention of drug and alcohol abuse programs, the following goals:

(1) Drug and alcohol abuse education has been included within the mandatory curriculum in kindergarten and grades 1 to 12, inclusive, in every public school in California.

(2) Basic training on how to recognize, and understand what to do about, drug and alcohol abuse has been provided to administrators and all teachers of kindergarten and grades 1 to 12, inclusive.

(3) All school counselors and school nurses have received comprehensive drug and alcohol abuse training.

(4) Each public school district with kindergarten and grades 1 to 12, inclusive, has appointed a drug and alcohol abuse advisory team of school administrators, teachers, counselors, students, parents, community representatives, and health care professionals, all of whom have expertise in drug and alcohol abuse prevention. The team coordinates with and receives consultation from the county alcohol and drug program administrators.

(5) Every school board member has received basic drug and alcohol abuse information.

(6) Each school district has a drug and alcohol abuse specialist to assist the individual schools.

(7) Each school in grades 7 to 12, inclusive, has student peer group drug and alcohol abuse programs.

(8) Every school district with kindergarten and grades 1 to 12, inclusive, has updated written drug and alcohol abuse policies and procedures including disciplinary procedures which will be given to every school employee, every student, and every parent.

(9) The California State University and the University of California have evaluated and, if feasible, established educational programs and degrees in the area of drug and alcohol abuse.

(10) Every school district with kindergarten and grades 1 to 12, inclusive, has an established parent teachers group with drug and alcohol abuse prevention goals.

(11) Every school district has instituted a drug and alcohol abuse education program for parents.

(12) Drug and alcohol abuse training has been imposed as a condition for teacher credentialing and license renewal, and knowledge on the issue is measured on the California Basic Education Skills Test.

(13) Drug and alcohol abuse knowledge has been established as a component on standardized competency tests as a requirement for graduation.

(14) Every school district has established a parent support group.

(15) Every school district has instituted policies which address the special needs of children who have been rehabilitated for drug or alcohol abuse problems and who are reentering school. These policies shall consider the loss of schooltime, the loss of academic credits, and the sociological problems associated with drug and alcohol abuse, its rehabilitation, and the educational delay it causes.

(16) The number of drug and alcohol abuse related incidents on school grounds has decreased by 20 percent.

(b) With regard to community programs, the following goals:

(1) Every community-based social service organization that receives state and local financial assistance has drug and alcohol abuse information available for clients.

(2) All neighborhood watch, business watch, and community conflict resolution programs have included drug and alcohol abuse prevention efforts.

(3) All community-based programs that serve schoolaged children have staff trained in drug and alcohol abuse and give a clear, drug- and alcohol-free message.

(c) With regard to drug and alcohol abuse programs of the media, the following goals:

(1) The state has established a comprehensive media campaign that involves all facets of the drug and alcohol abuse problem, including treatment, education, prevention, and intervention that will result in increasing the public's knowledge and awareness of the detrimental effects of alcohol and drug use, reducing the use of alcohol and drugs, and increasing healthy lifestyle choices.

(2) The department on a statewide basis, and the county board of supervisors or its designees at the local level, have:

(A) Assisted the entertainment industry in identifying ways to effectively use the entertainment industry to encourage lifestyles free of substance abuse.

(B) Assisted the manufacturers of drug and alcohol products in identifying ways to use product advertising effectively to discourage substance abuse.

(C) Assisted television stations in identifying ways to use television programming effectively to encourage lifestyles free of substance abuse.

(3) A statewide cooperative fundraising program with recording artists and the entertainment industry has been encouraged to fund drug and alcohol abuse prevention efforts in the state.

(d) With regard to drug and alcohol abuse health care programs, the following goals:

(1) The number of drug and alcohol abuse-related medical emergencies has decreased by 4 percent per year.

(2) All general acute care hospitals and AIDS medical service providers have provided information to their patients on drug and alcohol abuse.

(3) The Medical Board of California, the Psychology Examining

Committee, the Board of Registered Nursing, and the Board of Behavioral Science Examiners have developed and implemented the guidelines or regulations requiring drug and alcohol abuse training for their licensees, and have developed methods of providing training for those professionals.

(e) With regard to private sector drug and alcohol abuse programs, the following goals:

(1) A significant percentage of businesses in the private sector have developed personnel policies that discourage drug and alcohol abuse and encourage supervision, training, and employee education.

(2) Noteworthy and publicly recognized figures and private industry have been encouraged to sponsor fundraising events for drug and alcohol abuse prevention.

(3) Every public or private athletic team has been encouraged to establish policies forbidding drug and alcohol abuse.

(4) The private sector has established personnel policies that discourage drug and alcohol abuse but encourage treatment for those employees who require this assistance.

(f) With regard to local government drug and alcohol abuse programs, the following goals:

(1) Every county has a five-year master plan to eliminate drug and alcohol abuse developed jointly by the county-designated alcohol and drug program administrators, reviewed jointly by the advisory boards set forth in paragraph (2), and approved by the board of supervisors. For those counties in which the alcohol and drug programs are jointly administered, the administrator shall develop the five-year master plan. To the degree possible, all existing local plans relating to drug or alcohol abuse shall be incorporated into the master plan.

(2) Every county has an advisory board on alcohol problems and an advisory board on drug programs. The membership of these advisory boards is representative of the county's population and is geographically balanced. To the maximum extent possible the county advisory board on alcohol problems and the county advisory board on drug programs will have representatives of the following:

(A) Law enforcement.

(B) Education.

(C) The treatment and recovery community, including a representative with expertise in AIDS treatment services.

(D) Judiciary.

(E) Students.

(F) Parents.

(G) Private industry.

(H) Probation.

(I) Other community organizations involved in drug and alcohol services.

(J) A representative of organized labor responsible for the provision of Employee Assistance Program services.

If any of these areas are not represented on the advisory bodies,

the administrator designated in paragraph (1) shall solicit input from a representative of the nonrepresented area prior to the development of a master plan pursuant to paragraph (1).

(3) Every county public social service agency has established policies that discourage drug and alcohol abuse and encourage treatment and recovery services when necessary.

(4) Every local unit of government has an employee assistance program that addresses drug and alcohol abuse problems.

(5) Every local unit of government has considered the potential for drug and alcohol abuse problems when developing zoning ordinances and issuing conditional use permits.

(6) Every county master plan includes treatment and recovery services. Every county master plan shall include treatment and recovery services for juvenile offenders on probation and juvenile offenders committed to ranches, camps, and schools.

(6.5) Every county master plan includes specialized provisions to ensure optimum alcohol and drug abuse service delivery for handicapped and disabled persons.

(7) Every local unit of government has been encouraged to establish an employee assistance program that includes the treatment of drug and alcohol abuse-related programs.

(8) Every local governmental social service provider has established a referral system under which clients with drug and alcohol abuse problems can be referred for treatment.

(9) Every county drug and alcohol abuse treatment or recovery program which serves women gives priority for services to pregnant women.

(10) Every alcohol and drug abuse program provides acquired immune deficiency syndrome (AIDS) information to all program participants.

(g) With regard to state and federal government drug and alcohol abuse programs, the following goals:

(1) The Department of Alcoholic Beverage Control has informed all alcohol retailers of the laws governing liquor sales and has provided training available to all personnel selling alcoholic beverages, on identifying and handling minors attempting to purchase alcohol.

(2) The Office of Criminal Justice Planning has required all applicants for crime prevention and juvenile justice and delinquency prevention funds to include drug and alcohol abuse prevention efforts in their programs.

(3) All county applications for direct or indirect drug and alcohol services funding from the department include a prevention component.

(4) The Superintendent of Public Instruction has employed drug and alcohol abuse school prevention specialists and assisted local school districts with the implementation of prevention programs.

(5) The State Department of Mental Health has staff trained in drug and alcohol abuse prevention who can assist local mental health

programs with prevention efforts.

(6) The Department of the California Highway Patrol, as permitted by the United States Constitution, has established routine statewide sobriety checkpoints for driving while under the influence.

(7) The Department of Corrections and the Department of the Youth Authority have provided drug and alcohol abuse education and prevention services for all inmates, wards, and parolees. Both departments have provided drug and alcohol abuse treatment services for any inmate, ward, or parolee determined to be in need of these services, or who personally requests these services.

(8) The Department of Motor Vehicles has distributed prevention materials with each driver's license or certificate of renewal and each vehicle registration renewal mailed by the Department of Motor Vehicles.

(9) Federal prevention programs have been encouraged to follow the master plan.

(10) State licensing and program regulations for drug and alcohol abuse treatment programs have been consolidated and administered by one state agency.

(11) State treatment funding priorities have been included to specially recognize the multiple diagnosed client who would be eligible for services from more than one state agency.

(12) Every state agency has formalized employee assistance programs that include the treatment of drug and alcohol abuse-related problems.

(13) The state master plan includes specialized provisions to ensure optimum drug and alcohol abuse service delivery for handicapped and disabled persons.

(14) The Department of Commerce, in coordination with private industry, encourages the creation of employee alcohol and drug abuse prevention programs in the workplace or provides information to employees on treatment or recovery programs that are available to them.

(h) With regard to private sector direct service providers, the following goals:

(1) Drinking drivers programs have provided clear measurements of successful completion of the program to the courts for each court-ordered client.

(2) Sufficient drug and alcohol treatment and recovery services exist throughout the state to meet all clients' immediate and long-range needs.

(3) Each county to the extent possible provides localized alcohol and drug treatment and recovery services designed for individuals seeking assistance for polydrug abuse.

(4) Adequate nonresidential and residential services are available statewide for juveniles in need of alcohol or drug abuse services.

(5) Each provider of alcohol or drug services has been certified by the state.

(6) Drug and alcohol abuse treatment providers provide general

acquired immune deficiency syndrome (AIDS) information during treatment.

(i) With regard to supply regulation and reduction in conjunction with drug and alcohol abuse, the following goals:

(1) The California National Guard supports federal, state, and local drug enforcement agencies in counternarcotic operations as permitted by applicable laws and regulations.

(2) Each county has a drug and alcohol abuse enforcement team, designated by the board of supervisors. This team includes all components of the criminal justice system. This team shall be responsible to the board of supervisors, shall coordinate with the drug and alcohol abuse advisory board and the county on all criminal justice matters relating to drug and alcohol abuse, and shall coordinate, and actively participate, with the county alcohol and drug program administrators throughout the development and implementation of the five-year master plan.

(3) The Office of Criminal Justice Planning, the Youth and Adult Correctional Agency, the Department of the California Highway Patrol, the Office of Traffic Safety, and the Department of Justice have established a state level drug and alcohol abuse enforcement team that includes representatives from all facets of criminal justice. The lead agency for the enforcement team has been designated by the Governor. This team advises the state and assists the local teams.

(4) The Office of Criminal Justice Planning, the Youth and Adult Correctional Agency, and the Department of Justice have, as a priority when determining training subjects, prevention seminars on drug and alcohol abuse. The Commission on Peace Officer Standards and Training has, as a priority when determining training subjects, drug and alcohol enforcement.

(5) The Department of the California Highway Patrol, as permitted by the United States Constitution, will in conjunction with establishing sobriety checkpoints statewide, assist local law enforcement agencies with the establishment of local programs.

(6) Counties with more than 10 superior court judgeships have established programs under which drug cases receive swift prosecution by well-trained prosecutors before judges who are experienced in the handling of drug cases.

(7) The courts, when determining bail eligibility and the amount of bail for persons suspected of a crime involving a controlled substance, shall consider the quantity of the substance involved when measuring the danger to society if the suspect is released.

(8) Drunk driving jails have been established that provide offender education and treatment during incarceration.

(9) All probation and parole officers have received drug and alcohol abuse training, including particular training on drug recognition.

(10) All parolees and persons on probation with a criminal history that involves drug or alcohol abuse have conditions of parole or probation that prohibit drug and alcohol abuse.

(11) The Judicial Council has provided training on drug and alcohol abuse for the judges.

(12) The courts, when sentencing offenders convicted of selling drugs, consider "street value" of the drugs involved in the underlying crime.

(13) Judges have been encouraged to include drug and alcohol abuse treatment and prevention services in sentences for all offenders. Judges are requiring, as a condition of sentencing, drug and alcohol abuse education and treatment services for all persons convicted of driving under the influence of alcohol or drugs.

(14) Juvenile halls and jails provide clients with information on drug and alcohol abuse.

(15) The estimated number of clandestine labs operating in California has decreased by 10 percent per year.

(16) Each local law enforcement agency has developed, with the schools, protocol on responding to school drug and alcohol abuse problems.

(17) Every county has instituted a mandatory driving while under the influence presentence offender evaluation program.

SEC. 2. Section 11998.3 of the Health and Safety Code is repealed.

SEC. 3. Section 11998.3 is added to the Health and Safety Code, to read:

11998.3. (a) Priority in allocating state funds for substance abuse to law enforcement agencies shall be given to those counties whose law enforcement agencies are participating in both of the following:

(1) A drug and alcohol abuse enforcement team established in accordance with paragraph (2) of subdivision (i) of Section 11998.1.

(2) Development and implementation of a county master plan pursuant to this chapter.

(b) The drug and alcohol abuse enforcement team shall adopt measures to coordinate the efforts of drug and alcohol abuse law enforcement agencies within the county.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 11998.1 of the Health and Safety Code proposed by both this bill and AB 3567. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1991, (2) each bill amends Section 11998.1 of the Health and Safety Code, and (3) this bill is enacted after AB 3567, in which case Section 1 of this bill shall not become operative.

CHAPTER 1611

An act to add and repeal Sections 17052.11 and 23603 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares as follows:

(1) In many areas of the state, motor vehicles with conventional gasoline and diesel combustion engines are responsible for more air pollution than any other single source.

(2) Improved technology has made the use of low-emission vehicles feasible for use in the state.

(3) It is in California's best interests to encourage the use of low-emission vehicles because they are expected to result in a substantial decrease in vehicle-created air pollution.

(4) In first enacting Sections 17052.11 and 23603 of the Revenue and Taxation Code, the Legislature recognized that tax credit incentives should be offered to individuals and corporations who convert their vehicles to the use of ethanol or methanol.

(b) It is the intent of the Legislature in enacting this act to provide similar tax incentives for the use of other types of low-emission vehicles, such as those powered by compressed natural gas, liquified petroleum gas, and electricity. It is further the intent of the Legislature that these tax incentives also be available to purchasers of new vehicles which are factory equipped to qualify as low-emission vehicles as defined in Section 39037.05 of the Health and Safety Code. The Legislature intends that this act will also promote the early construction of the refueling infrastructure necessary to support the rapidly increasing numbers of low-emission vehicles on the state's roads and highways.

SEC. 2. Section 17052.11 is added to the Revenue and Taxation Code, to read:

17052.11. (a) For taxable years beginning on or after January 1, 1991, and before January 1, 1995, there shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to 55 percent of the costs (including installation charges but excluding interest charges), of a device designed and installed to convert a motor vehicle, which is intended to be used on public roads and highways and is registered in this state, to a low-emission motor vehicle. The credit allowed by this section shall be claimed in the taxable year the device is installed and shall not exceed one thousand dollars ($1,000) per automobile, motorcycle, or two person passenger vehicle, or three thousand five hundred dollars ($3,500) for a vehicle whose weight is in excess of 5,750 pounds.

(b) The credit provided by subdivision (a) shall also be allowed for the cost of a new motor vehicle which is equipped from the factory to operate as a low-emission motor vehicle and is certified by the state board to be a low-emission motor vehicle and which is registered in this state.

(c) In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to a partner's distributive share.

(d) For purposes of this section, "device" means any apparatus not otherwise required by federal or California law that is designed and installed to convert a new or used motor vehicle to a low-emission motor vehicle as certified by the state board.

(e) For purposes of this section, "low-emission motor vehicle" means a vehicle as defined under Section 39037.05 of the Health and Safety Code.

(f) For purposes of this section, "state board" refers to the Air Resources Board.

(g) The taxpayer or partnership shall qualify for the credit after application to and certification by the State Energy Resources Conservation and Development Commission (hereafter referred to as the California Energy Commission) that all of the following conditions are met:

(1) The device or vehicle qualifies for the credit under this section.

(2) Credit allocation is available.

(h) The taxpayer or partnership shall do all of the following:

(1) (A) Apply to the California Energy Commission for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the California Energy Commission, including, but not limited to, all of the following:

(i) A plan to purchase a device, as defined in subdivision (d), or a vehicle.

(ii) The cost estimates of the device or vehicle.

(2) Notify the California Energy Commission in a form and manner specified by the California Energy Commission that the device or vehicle has actually been purchased.

(3) Retain a copy of the certification issued by the California Energy Commission.

(4) Make the certification available to the Franchise Tax Board upon demand.

(5) The partnership shall disclose in its tax return each year all of the following:

(A) The name of each partner who received a credit allocation.

(B) The partner's social security number or identification

number.

(C) The amount of credit allocation distributed to each partner.

(i) The California Energy Commission shall do all of the following:

(1) Establish criteria for allocation of the credit amounts in the case where more than seven hundred fifty thousand dollars ($750,000) of credits are requested annually.

(2) Provide guidelines and criteria for application for credit allocation.

(3) Accept applications and issue certificates including the credit amount to which the taxpayer or partnership is entitled.

(4) Provide an annual listing to the Franchise Tax Board (preferably on magnetic tape or other machine-readable form, and in a form and manner agreed upon by the Franchise Tax Board and the California Energy Commission) of the qualified taxpayers or partnerships who were issued the certification and the allowable amount of the credit allocated to each taxpayer or partnership.

(j) The taxpayers' social security numbers or identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(k) If a federal tax credit is enacted for costs incurred by a taxpayer for devices described in this section, then to the extent that credit is allowed or allowable, the state credit provided in subdivision (a) shall be reduced by the amount of the federal credit.

(*l*) That portion of the credit under this section which exceeds the "net tax" for the taxable year may not be carried over and applied to the "net tax" in succeeding taxable years.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 23603 shall not exceed seven hundred fifty thousand dollars ($750,000) per year. The California Energy Commission shall not authorize any credit if the credit would cause the total amount of credit authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law to exceed seven hundred fifty thousand dollars ($750,000).

(n) (1) This section shall become operative on January 1, 1991.

(2) This section shall remain in effect only until December 1, 1995, and as of that date is repealed.

SEC. 3. Section 23603 is added to the Revenue and Taxation Code, to read:

23603. (a) For income years beginning on or after January 1, 1991, and before January 1, 1995, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 55 percent of the cost (including installation charges but excluding interest charges), of a device designed and installed to convert a motor vehicle, which is intended to be used on public roads and highways and is registered in this state, to a low-emission motor vehicle. The credit allowed by this section shall be claimed in the income year the device is installed and shall not exceed one thousand dollars ($1,000) per automobile, motorcycle, or two person passenger

vehicle, or three thousand five hundred dollars ($3,500) for a vehicle whose weight is in excess of 5,750 pounds.

(b) The credit provided by subdivision (a) shall also be allowed for the cost of a new motor vehicle which is equipped from the factory to operate as a low-emission motor vehicle and is certified by the state board to be a low-emission motor vehicle and which is registered in this state.

(c) If two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the expenses paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to partner's distributive share.

(d) For purposes of this section, "device" means any apparatus not otherwise required by federal or California law that is designed and installed to convert a new or used motor vehicle to a low-emission motor vehicle as certified by the state board.

(e) For purposes of this section, "low-emission motor vehicle" means a vehicle as defined under Section 39037.05 of the Health and Safety Code.

(f) For purposes of this section, "state board" refers to the Air Resources Board.

(g) The taxpayer shall qualify for the credit after application to and certification by the State Energy Resources Conservation and Development Commission (hereafter referred to as the California Energy Commission) that all of the following conditions are met:

(1) The device or vehicle qualifies for the credit under this section.

(2) Credit allocation is available.

(h) The taxpayer shall do all of the following:

(1) (A) Apply to the California Energy Commission for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the California Energy Commission, including, but not limited to, all of the following:

(i) A plan to purchase a device, as defined in subdivision (d), or a vehicle.

(ii) The cost estimates of the device or vehicle.

(2) Notify the California Energy Commission in a form and manner specified by the California Energy Commission that the device or vehicle has actually been purchased.

(3) Retain a copy of the certification issued by the California Energy Commission.

(4) Make the certification available to the Franchise Tax Board upon demand.

(5) The partnership or S corporation shall disclose in its tax return

each year all of the following:

(A) The name of each partner or shareholder who received a credit allocation.

(B) The partner's or shareholder's social security number or identification number.

(C) The amount of credit allocation distributed to each partner or shareholder.

(i) The California Energy Commission shall do all of the following:

(1) Establish criteria for allocation of the credit amounts in the case where more than seven hundred fifty thousand dollars ($750,000) of credit are requested annually.

(2) Provide guidelines and criteria for application for credit allocation.

(3) Accept applications and issue certificates including the credit amount to which the taxpayer is entitled.

(4) Provide an annual listing to the Franchise Tax Board (preferably on magnetic tape or other machine-readable form, and in a form and manner agreed upon by the Franchise Tax Board and the California Energy Commission) of the qualified taxpayers who were issued the certification and the allowable amount of the credit allocated to each taxpayer.

(j) The taxpayers' identification numbers obtained through the tax credit application and certification process shall be used exclusively for state tax administrative purposes.

(k) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of a device described in this section, then to the extent such credit is allowed or allowable, the state credit provided in subdivision (a) shall be reduced by the amount of the federal credit.

(*l*) In the case where the credit allowed by this section exceeds the "tax," the excess may not be carried over for application to subsequent years.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 17052.11 shall not exceed seven hundred fifty thousand dollars ($750,000) per year. The California Energy Commission shall not authorize any credit if the credit would cause the total amount of credit authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law to exceed seven hundred fifty thousand dollars ($750,000).

(n) (1) This section shall become operative on January 1, 1991.

(2) This section shall remain in effect only until December 1, 1995, and as of that date is repealed.

SEC. 4. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the General Fund to the State Energy Resources Conservation and Development Commission for administrative costs incurred pursuant to this act.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1612

An act to add Sections 5350, 5351, 5352, and 5353 to the Food and Agricultural Code, relating to pest control, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the California Airport and Maritime Plant Quarantine, Inspection, and Plant Protection Act.

SEC. 2. The Legislature finds and declares the following:

(a) The introduction of exotic plant and animal pests poses a serious threat to the health, safety, and economic well-being of the people of the state.

(b) Imported products provide a host material for exotic pests entering the state and the inspection of host material and the exclusion of exotic plant and animal pests is the most effective and efficient pest management tool available to the state.

(c) The inspection and removal of exotic pests from air and marine conveyances is a necessary and reasonable service provided by the state and its political subdivisions.

SEC. 3. Section 5350 is added to the Food and Agricultural Code, to read:

5350. (a) The director shall establish a program for the inspection of conveyances entering California through airport and maritime facilities to prevent the introduction into, or the spread within, this state of pests.

(b) The director shall maintain plant quarantine inspection stations at points of entry at airports and marine terminals pursuant to Section 5341.

(c) The director shall establish a program for the dissemination of information at airports and marine terminals in order to provide the users of the facilities information regarding the pest control and quarantine requirements of this state.

(d) The director may authorize the inspection and certification of conveyances outside the state if the director finds that the inspection and certification meets the standards established for in-state inspection and certification programs and, for that purpose, may enter into any agreements necessary with any other state or the federal government. The director may provide that conveyances inspected and certified pursuant to this subdivision are not required to be inspected at California airports or marine terminals.

(e) The functions of this section shall be performed by the Division of Plant Industry, Pest Exclusion Branch, of the department,

and the duties shall be performed by plant quarantine officers.

SEC. 4. Section 5351 is added to the Food and Agricultural Code, to read:

5351. (a) The director shall levy a service charge, to the extent authorized by subsection (b) of Section 1513 of Title 49 of the United States Code, based on the schedule established pursuant to Section 5353, on each air carrier or foreign air carrier engaged in foreign air commerce, as those terms are defined by Section 5353, for the use of airport facilities for plant and animal pest inspection, quarantine, and eradication.

(b) For the purposes of this section, "airport facilities" means those airports owned or operated by any public entity.

SEC. 5. Section 5352 is added to the Food and Agricultural Code, to read:

5352. To the extent permitted by federal law, the director shall levy a fee on commercial marine carriers, based on the schedule established pursuant to Section 5353, for the use of marine terminal facilities for plant and animal pest inspection, quarantine, and eradication. The director shall identify and establish a list of countries which the director has reason to believe are potential sources of exotic plant and animal pests.

SEC. 6. Section 5353 is added to the Food and Agricultural Code, to read:

5353. (a) Each air carrier or foreign air carrier engaged in foreign air commerce which carries animals or plants or other materials which are, or are likely to be, infected or infested with any pest shall pay a charge of eighty-five dollars ($85) to the director upon the initial landing in this state of each flight of the carrier which originates outside the United States.

(b) Each commercial marine carrier engaged in foreign commerce which carries animals or plants or other materials which are, or are likely to be, infected or infested with any pest shall pay a fee of two hundred dollars ($200) to the director upon the initial arrival in this state of the carrier on a voyage which originated outside the United States from a country identified and listed by the director pursuant to Section 5352, or which made an intermediate stop on that voyage in a country identified and listed by the director pursuant to Section 5352.

(c) Each such carrier shall maintain records, which shall be subject to inspection by the director, and pay the charges and fees prescribed by this section in accordance with a procedure adopted by the director, by regulation.

(d) Each such carrier who fails to pay the charges and fees required pursuant to this section and the regulations adopted pursuant to this section is subject to a penalty of 2 percent on the amount of the unpaid charge or fee for each month, or portion thereof, that the charges or fees are not paid.

(e) The charges and fees collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund and

shall be used by the director for the purposes of this section and Section 5350.

(f) The director may, by regulation, increase or decrease any of the charges or fees prescribed in subdivision (a) or (b) upon determining that the revenue received is inadequate or in excess of the amount needed to conduct an effective inspection program. The maximum adjusted charge or fee shall not exceed three times the amount of the charge or fee specified in subdivision (a) or (b).

(g) The director may contract with federal and state agencies and with county agricultural commissioners to assist the director in carrying out the purposes of this section and Section 5350.

(h) The regulations adopted by the director pursuant to this section shall be deemed to relate to rates for purposes of Section 11343 of the Government Code and are not subject to review, approval, or disapproval by the Office of Administrative Law pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(i) "Air carrier," "foreign air carrier," and "foreign air commerce", as used in this section, and Section 5351 shall have the same meaning as specified in subsections (3), (22), and (23), respectively, of Section 1301 of Title 49 of the United States Code.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

It is necessary to enact programs that are alternatives to the repeated application of pesticides in order to eradicate pests, including the Mediterranean fruit fly in Los Angeles County. This act would enact one such alternative and, in order to protect the people and the environment from the repeated application of pesticides and to protect California's agriculture from pests as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1613

An act to add Sections 25097 and 25098 to, and to add Chapter 6.1 (commencing with Section 25015) to Division 20 of, the Health and Safety Code, relating to medical waste.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.1 (commencing with Section 25015) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.1. MEDICAL WASTE MANAGEMENT ACT

Article 1. Short Title

25015. This chapter shall be known and may be cited as the Medical Waste Management Act.

25016. This chapter does not preempt local medical waste ordinances, resolutions, or regulations in effect as of January 1, 1990. Any such ordinance may be amended in a manner which is consistent with this chapter.

25017. The department shall adopt regulations which will establish and ensure statewide standards for uniformity in the implementation and administration of this chapter.

25018. Notwithstanding Section 25016, with the approval of the director, and in the interest of public health, a local ordinance providing more stringent requirements than specified in this chapter may be implemented for a specified time period.

25019. The department and any local enforcement agency initially electing to implement a medical waste management program pursuant to this chapter shall initiate that program and begin enforcement of its provisions on or before April 1, 1991, except for medical waste programs operating under Section 25016.

Article 2. Definitions

25020. Unless the context requires otherwise, the definitions in this article govern the construction of this chapter.

25020.2. "Biohazard bag" means a disposable red bag which is impervious to moisture and has a strength sufficient to preclude ripping, tearing, or bursting under normal conditions of usage and handling of the waste-filled bag. A biohazard bag shall be constructed of material of sufficient single thickness strength to pass the 165-gram dropped dart impact resistance test as prescribed by Standard D 1709-85 of the American Society for Testing and Materials and certified by the bag manufacturer.

25020.5. "Biohazardous waste" means any of the following:

(a) Laboratory waste, including, but not limited to, all of the following:

(1) Human or animal specimen cultures from medical and pathological laboratories.

(2) Cultures and stocks of infectious agents from research and industrial laboratories.

(3) Wastes from the production of bacteria, viruses, or the use of spores, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures.

(b) Waste containing any microbiologic specimens sent to a laboratory for analysis.

(c) Human surgery specimens or tissues removed at surgery or autopsy, which are suspected by the attending physician and surgeon or dentist of being contaminated with infectious agents known to be contagious to humans.

(d) Animal parts, tissues, fluids, or carcasses suspected by the attending veterinarian of being contaminated with infectious agents known to be contagious to humans.

(e) Waste, which at the point of transport from the generator's site, at the point of disposal, or thereafter, contains recognizable fluid blood, fluid blood products, containers, or equipment containing blood that is fluid or blood from animals known to be infected with diseases which are highly communicable to humans.

(f) Waste containing discarded materials contaminated with excretion, exudate, or secretions from humans who are required to be isolated by the infection control staff, the attending physician and surgeon, the attending veterinarian, or the local health officer, to protect others from highly communicable diseases or isolated animals known to be infected with diseases which are highly communicable to humans.

25020.8. "Common storage facility" means any designated accumulation area maintained in accordance with this chapter, used by small quantity generators otherwise operating independently, for the storage of medical waste for collection by a registered hazardous waste hauler.

25021. "Container" means the bag or rigid container in which the medical waste is placed prior to transporting for purposes of storage or treatment.

25021.2. "Enforcement agency" means the department or the local agency administering this chapter.

25021.5. "Enforcement officer" means the director, or agents or registered environmental health specialists appointed by the director, and all local health officers, directors of environmental health, and their duly authorized registered environmental health specialists and environmental health specialist trainees, or the designees of the director, local health officers, or the directors of environmental health.

25021.8. "Hazardous waste hauler" means a person registered as

a hazardous waste hauler pursuant to Article 6 (commencing with Section 25160) and Article 6.5 (commencing with Section 25167.1) of Chapter 6.5 of this division and Chapter 30 (commencing with Section 66001) of Division 4 of Title 22 of the California Code of Regulations.

25022. "Highly communicable diseases" means diseases, such as those caused by organisms classified by the federal Centers for Disease Control as Biosafety Level IV organisms, which, in the opinion of the infection control staff, the department, local health officer, attending physician and surgeon, or attending veterinarian merit special precautions to protect staff, patients, and other persons from infection.

"Highly communicable diseases" does not include diseases such as the common cold, influenza, or other diseases not representing a significant danger to nonimmunocompromised persons.

25022.2. "Household waste" means any material, including garbage, trash, and sanitary wastes in septic tanks and medical waste, which is derived from households, farms, or ranches.

25022.5. "Infectious agent" means a type of microorganism, bacteria, mold, parasite, or virus which normally causes, or significantly contributes to the cause of, increased morbidity or mortality of human beings.

25022.8. "Large quantity generator" means a medical waste generator that generates 200 or more pounds per month of medical waste.

25023. "Local agency" means the local health department, as defined in Section 1102, or the local comprehensive environmental agency established in accordance with Section 1155.5, of a county which has elected to adopt a local ordinance to administer and enforce this chapter, pursuant to Article 3 (commencing with Section 25030).

25023.2. "Medical waste" is all of the following:

(a) Biohazardous waste or sharps waste.

(b) Waste which is generated or produced, as a result of the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals.

Medical waste may contain infectious agents.

25023.5. Medical waste which has been treated in accordance with Article 9 (commencing with Section 25090) and which is not otherwise hazardous, shall thereafter be considered solid waste as defined in Section 40191 of the Public Resources Code and not medical waste.

25023.8. Medical waste does not include any of the following:

(a) Waste containing microbiological cultures used in food processing and biotechnology and any containers or devices used in the preparation and handling of these cultures, that is not considered to be an infectious agent pursuant to Section 25022.5.

(b) Waste which is not biohazardous, such as paper towels, paper

products, articles containing nonfluid blood, and other medical solid waste products commonly found in the facilities of medical waste generators.

(c) Hazardous waste, radioactive waste, or household waste.

(d) Waste generated from normal and legal veterinarian, agricultural, and animal livestock management practices on a farm or ranch.

25024. "Medical waste generator" means any person, whose act or process produces medical waste and includes, but is not limited to, a provider of health care as defined in subdivision (a) of Section 56.05 of the Civil Code. All of the following are examples of businesses which generate medical waste:

(a) Medical and dental offices, clinics, hospitals, surgery centers, laboratories, research laboratories, other health facilities required to be licensed pursuant to Division 2 (commencing with Section 1200), and unlicensed facilities.

(b) Veterinary offices, clinics, and hospitals.

(c) Pet shops.

25024.2. "Medical waste management plan" means a document which is completed by generators of medical waste pursuant to Sections 25042 and 25052, on forms prepared by the enforcement agency.

25024.5. "Medical waste permit" means a permit issued by the enforcement agency to a medical waste treatment facility.

25024.8. "Medical waste registration" means a registration issued by the enforcement agency to a medical waste generator.

25025. (a) "Medical waste treatment facility" means all adjacent land and structures, and other appurtenances or improvements on the land, used for treating medical waste or for associated handling and storage of medical waste. Medical waste treatment facilities are those facilities treating waste pursuant to subdivision (a) or (c) of Section 25090. A medical waste treatment method approved pursuant to subdivision (d) of Section 25090 may be designated as a medical waste treatment facility by the department.

(b) "Adjacent," for purposes of subdivision (a), means real property within 400 yards from the property boundary of the existing medical waste treatment facility.

25025.2. "Mixed waste" means mixtures of medical and nonmedical waste. Mixed waste is medical waste, except for all of the following:

(a) Medical waste and hazardous waste is hazardous waste and is subject to regulation as specified in the statutes and regulations applicable to hazardous waste.

(b) Medical waste and radioactive waste is radioactive waste and is subject to regulation as specified in the statutes and regulations applicable to radioactive waste.

(c) Medical waste, hazardous waste, and radioactive waste is radioactive mixed waste and is subject to regulation as specified in the statutes and regulations applicable to hazardous waste and

radioactive waste.

25025.5. "Offsite" means any location which is not onsite.

25025.8. (a) "Onsite" means a medical waste treatment facility on the same or adjacent property.

(b) "Adjacent," for purposes of subdivision (a), means real property within 400 yards from the property boundary of the existing medical waste treatment facility.

25026. "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, district, commission, the state or any department, agency, or political subdivision thereof, the Regents of the University of California, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

25026.2. "Sharps container" means a rigid puncture-resistant container which, when sealed, is leak resistant and cannot be reopened without great difficulty.

25026.5. "Sharps waste" means any device having acute rigid corners, edges, or protuberances capable of cutting or piercing, including, but not limited to, all of the following:

(a) Hypodermic needles, syringes, blades, and needles with attached tubing.

(b) Broken glass items, such as Pasteur pipettes and blood vials contaminated with other medical waste.

25026.8. "Small quantity generator" means a medical waste generator that generates less than 200 pounds per month of medical waste.

25027. "Storage" means the holding of medical wastes at a designated accumulation area, as specified in Article 8 (commencing with Section 25080).

25027.2. "Tracking document" means the medical waste tracking document specified in Section 25063.

25027.5. "Transfer station" means any offsite location where medical waste is loaded, unloaded, or stored during the normal course of transportation of the medical waste.

25027.8. "Treatment" means any method, technique, or process designed to change the biological character or composition of any medical waste so as to eliminate its potential for causing disease, as specified in Article 9 (commencing with Section 25090).

Article 3. General Provisions

25030. No large quantity generator shall generate medical waste unless the large quantity generator is registered with the enforcement agency pursuant to this chapter.

25030.1. A small quantity generator which treats medical waste onsite by steam sterilization, incineration, or microwave technology shall register with the enforcement agency pursuant to this chapter.

25030.2. No person shall haul medical waste unless the person meets either of the following requirements:

(a) The person is registered pursuant to Article 6 (commencing with Section 25160) and Article 6.5 (commencing with Section 25167.1) of Chapter 6.5 of this division and Chapter 30 (commencing with Section 66001) of Division 4 of Title 22 of the California Code of Regulations.

(b) The person has an approved limited-quantity exemption granted pursuant to Section 25061.

25030.4. No person shall treat medical waste unless the person is permitted by the enforcement agency as required by this chapter or unless the treatment is performed by a medical waste generator and is a treatment method approved pursuant to subdivision (d) of Section 25090.

25030.6. The department is the enforcement agency for offsite treatment facilities.

25030.8. The accumulated medical waste of more than one medical waste generator shall not be stored in a common storage facility unless that facility is registered with the enforcement agency.

25031. A local agency may implement a medical waste management program by the adoption of an ordinance or resolution by the local governing body, in accordance with this chapter.

25032. Except as provided in subdivision (a) of Section 25033, a local agency which elects to implement a medical waste management program shall notify the department within 90 days from the effective date of the act enacting this chapter.

25033. (a) If a local agency does not elect to implement a medical waste managment program, the local agency may elect to contract with another local agency to implement a medical waste management program or to implement it at a later date.

This election shall be made by the local governing body, which shall take effect 90 days after a notice of election is filed with the department.

(b) A local agency which elects to implement a medical waste management program shall continue to implement that program until the local governing body terminates the election by resolution or ordinance or the department revokes the authority of the local agency to administer a medical waste management program. The local agency shall file the notice of termination with the department at least 180 days prior to the termination date.

25034. Any local agency which has elected to implement a medical waste management program shall maintain a program which is consistent with Section 25034.3 and the regulations adopted pursuant to that section. With the approval of the department, the local agency may administer or enforce this chapter with respect to any person.

25034.3. A medical waste management program shall include, but not be limited to, all of the following:

(a) Issuing medical waste registrations pursuant to Article 5

(commencing with Section 25050) and permits pursuant to Article 7 (commencing with Section 25070).

(b) Processing and reviewing the medical waste management plans and inspecting onsite treatment facilities in accordance with Article 4 (commencing with Section 25040) for all small quantity medical waste generators required to be registered.

(c) Conducting an evaluation, inspection, or records review for all facilities or persons issued a large quantity medical waste registration pursuant to Article 5 (commencing with Section 25050) or issued a permit for an onsite medical waste treatment facility pursuant to Section 25070.

(d) Inspecting medical waste generators in response to complaints or emergency incidents, or as part of an investigation or evaluation of the implementation of the medical waste management plan.

(e) Inspecting medical waste treatment facilities in response to a complaint or as part of an investigation or emergency incident.

(f) Taking enforcement action for the suspension or revocation of medical waste permits issued by the local agency pursuant to this chapter.

(g) Referring or initiating proceedings for civil or criminal prosecution of violations specified in Article 10 (commencing with Section 25095).

(h) Reporting in a manner determined by the department so that the statewide effectiveness of the program can be determined.

25034.5. Each local enforcement agency which elects to implement the medical waste management program may prescribe, by resolution or ordinance, the registration and permit fees necessary to pay its reasonable expenses to administer the program.

25034.8. A local agency electing to implement a medical waste management program is the enforcement agency for the jurisdiction in which it is located and so designated by the department.

In any local jurisdiction where the local agency does not elect to implement a medical waste management program, the department is the enforcement agency.

25035. The department shall establish and maintain a data base of persons registered under Article 4 (commencing with Section 25040) and persons registered under Article 5 (commencing with Section 25050) for whom the department is the enforcement agency.

25036. It is the intent of the Legislature that the program carried out pursuant to this chapter be fully supported from the fees received pursuant to this chapter.

25037. The department shall implement this chapter so as to maximize the funds which may be received from the federal government.

25037.5. Information may be shared between the department and the Environmental Protection Agency.

25038. If the department finds that a local enforcement agency is not consistently fulfilling its responsibilities, the department shall

notify the agency of the particular reasons for finding that the agency is not fulfilling its responsibilities and of the department's intention to withdraw its designation if, within a time to be specified in that notification, but in no event less than 30 days, the agency does not take the corrective action specified by the department.

25038.2. If the department withdraws its designation of a local enforcement agency, the department shall become the enforcement agency within the jurisdiction of the local enforcement agency.

25038.5. The department shall provide ongoing technical assistance and guidance to local enforcement agencies to assist them in their decisionmaking processes. This assistance shall include, but is not limited to, providing all of the following:

(a) Technical studies and reports.

(b) Copies of innovative facility operation plans.

(c) Investigative findings and analysis of new waste management practices and procedures.

25038.8. If the department identifies significant violations of minimum requirements that were not identified and resolved through previous inspections by the local enforcement agency, the department shall do all of the following:

(a) Conduct a performance review of the agency within 120 days.

(b) Prepare a written performance report within 60 days of the review.

(c) Require the submission of a plan of correction by the agency within 90 days of receiving the report.

25039. The department shall withdraw a local enforcement agency's designation pursuant to Section 25038.2 if it determines that the enforcement agency has failed to submit an adequate plan of correction or has failed to implement the plan.

25039.2. If the department becomes the enforcement agency, it may charge the fees specified in this chapter.

Article 4. Small Quantity Generator Requirements

25040. (a) Each small quantity generator using onsite steam sterilization, incineration, or microwave technology to treat medical waste shall register with the enforcement agency. Small quantity generators owning or operating a medical waste treatment facility shall also apply for a permit for that treatment facility pursuant to Article 7 (commencing with Section 25070).

(b) Small quantity generators using onsite treatment, as specified in subdivision (a), which operate as a business in the same building, or which are associated with a group practice in the same building, may register as one generator.

(c) Small quantity generators using onsite treatment, as specified in subdivision (a), as specified in subdivision (b), operating in different buildings on the same or adjacent property, or as approved by the enforcement agency, may register as one generator.

(d) "Adjacent," for purposes of subdivision (c), means real

property within 400 yards from the property boundary of the primary registration site.

25040.5. (a) Any common storage facility for the collection of medical waste produced by small quantity generators operating independently, but sharing common storage facilities, shall have a permit issued by the enforcement agency.

(b) A permit for any common storage facility specified in subdivision (a) may be obtained by any one of the following:

(1) A provider of health care as defined in subdivision (d) of Section 56.05 of the Civil Code.

(2) The hauler.

(3) The property owner.

(4) The property management firm responsible for providing tenant services to the medical waste generators.

25041. Small quantity generators subject to Section 25040 shall register with the enforcement agency on or before April 1, 1991, where the generation of medical waste began prior to that date.

In those cases where the generation of medical waste begins after April 1, 1991, registration shall be completed pursuant to this article prior to commencement of the generation of medical waste.

25041.5. Common storage facilities subject to Section 25040.5 shall obtain a permit from the enforcement agency on or before April 1, 1991, where the storage of medical waste in the common storage facility began prior to that date.

In those cases where the storage of medical waste begins after April 1, 1991, permits shall be obtained pursuant to this article prior to commencement of storage of medical waste in the common storage facility.

25042. Any small quantity generator required to register with the enforcement agency pursuant to Section 25041 shall file with the enforcement agency a medical waste management plan, on forms prescribed by the enforcement agency containing, but not limited to, all of the following:

(a) The name of the person.

(b) The business address of the person.

(c) The type of business.

(d) The types, and the estimated average monthly quantity, of medical waste generated.

(e) The type of treatment used onsite.

(f) The name and business address of the registered hazardous waste hauler used by the generator for backup treatment and disposal, for waste for which the onsite treatment method is not appropriate due to the hazardous or radioactive characteristics of the waste, or the name of the registered hazardous waste hauler used by the generator to have untreated medical waste removed for treatment and disposal.

(g) A statement indicating that the generator is hauling the medical waste generated in his or her business pursuant to Section 25061 and the name and any business address of the treatment and

disposal facilities to which the waste is being hauled, if applicable.

(h) The name and business address of the registered hazardous waste hauler service provided by the building management to which the building tenants may subscribe or are required by the building management to subscribe and the name and business address of the treatment and disposal facilities used, if applicable.

(i) A statement certifying that the information provided is complete and accurate.

25043. (a) Small quantity generators using onsite steam sterilization, incineration, or microwave technology to treat medical waste are subject to biennial inspection of that onsite treatment facility by the enforcement agency and may be subject to the permitting requirements for onsite medical waste treatment facilities as determined by the enforcement agency.

(b) The inspection and permitting requirements of subdivision (a) do not apply when onsite steam sterilization is not used for the treatment or disposal of medical waste.

25044. (a) Each enforcement agency shall follow procedures consistent with this article in registering medical waste generators.

(b) Each medical waste generator registration issued by the enforcement agency shall be valid for two years.

(c) An application for renewal of the registration shall be filed with the enforcement agency on or before the expiration date.

(d) Generators shall submit within 30 days an updated application form when any of the information specified in subdivisions (a) to (i), inclusive, of Section 25042 changes.

25045. A medical waste generator required to register pursuant to this article shall maintain individual treatment, and tracking records, if applicable, for three years, or for the period specified in the regulations, and shall report or submit to the enforcement agency, upon request, both of the following:

(a) Treatment operating records.

(b) An emergency action plan complying with regulations adopted by the department.

25045.1. Small quantity generators who are not required to register pursuant to this article shall maintain on file in their office all of following:

(a) An information document stating how the generator contains, stores, treats, and disposes of any medical waste generated through any act or process of the generator.

(b) Records of any medical waste transported offsite for treatment and disposal, including the quantity of waste transported, the date transported, and the name of the registered hazardous waste hauler or individual hauling the waste pursuant to Section 25061. The small quantity generator shall maintain these records for not more than two years.

25046. Containment and storage of medical waste shall be in accordance with Article 8 (commencing with Section 25080).

25047. Treatment of medical waste shall be in accordance with

Article 9 (commencing with Section 25090).

25048. The fee schedule specified in Section 25049 shall be for the issuance of medical waste registrations and for conducting inspections pursuant to this article when the department serves as the enforcement agency for small quantity generators. This fee schedule shall be adjusted annually in accordance with Section 113. On or before January 1, 1993, the department may adjust by regulation the fees specified in Section 25049 to reflect the actual costs of implementing this article. Local enforcement agencies shall set fees which shall be sufficient to cover their costs in implementing this chapter with regard to small quantity generators required to be registered pursuant to Section 25040.

25049. (a) The registration and inspection fee for small quantity generators using onsite treatment, including an autoclave, incinerator, or microwave technology, to treat medical waste is one hundred dollars ($100), which shall be paid once every two years.

(b) The annual permit fee for a common storage facility permitted pursuant to Section 25040.5 is the amount specified in the following schedule:

(1) For storage facilities serving 10 or fewer generators, the permit fee is one hundred dollars ($100).

(2) For storage facilities serving 11 or more generators, but not more than 50 generators, the permit fee is two hundred fifty dollars ($250).

(3) For storage facilities serving more than 50 generators, the permit fee is five hundred dollars ($500).

SEC. 2. Section 25097 is added to the Health and Safety Code, to read:

25097. (a) No person shall haul, transport, store, treat, dispose, or cause the treatment or disposal of medical waste in a manner not authorized by his or her permit or registration, this chapter, or the regulations adopted pursuant to this chapter.

(b) Any person who stores, treats, disposes, or causes the treatment or disposal of medical waste in violation of this chapter or the regulations adopted pursuant to this chapter is guilty of a public offense as follows:

(1) For a small quantity generator, a first offense is an infraction and is punishable by a fine of not more than one thousand dollars ($1,000).

(2) For a person other than a small quantity generator or a hauler required to be a registered hazardous waste hauler, a first offense is a misdemeanor punishable by a fine of not less than two thousand dollars ($2,000), or by up to one year in county jail, or by both the fine and imprisonment.

(c) A person who is convicted of a second or subsequent violation of subdivision (a) within three years of the prior conviction shall be punished by imprisonment in the county jail for not more than one year or by imprisonment in state prison for one, two, or three years or by a fine of not less than five thousand dollars ($5,000) or more

than twenty-five thousand dollars ($25,000), or by both the fine and imprisonment. This section shall not apply unless any prior conviction is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. If the defendant is a corporation which operates medical facilities in more than one geographic location, this subdivision shall apply only if the offense involves an adjacent facility involved in the prior conviction.

(d) Any person who knowingly treats or disposes, or causes the treatment or disposal of, medical waste in violation of this chapter shall be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for one, two, or three years, or by a fine of not less than five thousand dollars ($5,000) or more than twenty-five thousand dollars ($25,000), or by both the fine and imprisonment.

(e) The punishment set forth in this section shall not apply to a person hauling medical waste who is required to be a registered waste hauler. Those persons shall be penalized for violations pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

SEC. 3. Section 25098 is added to the Health and Safety Code, to read:

25098. (a) Any person who intentionally makes any false statement or representation in any application, label, tracking document, record, report, permit, registration, or other document filed, maintained, or used for purposes of compliance with this chapter which materially affects the health and safety of the public is liable for a civil penalty of not more than ten thousand dollars ($10,000) for each separate violation or, for continuing violations, for each day that the violation continues.

(b) Any person who fails to register or fails to obtain a medical waste permit in violation of this chapter, or otherwise violates any provision of this chapter, any order issued pursuant to Section 25096.1, or any regulation adopted pursuant to this chapter, is liable for a civil penalty of not more than ten thousand dollars ($10,000) for each violation of a separate provision of this chapter or, for continuing violations, for each day that the violation continues.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. It is the intent of the Legislture that Sections 1, 2, and 3 of this bill and Sections 4, 5, 6, 7, 8, 9, and 10 of Assembly Bill 1641 of the 1989–90 Regular Session comprise a single, integrated, and

complementary approach to the storage, treatment, transportation, and disposal of medical waste.

SEC. 6. This act shall be operative only if Assembly Bill 1641 is enacted and becomes operative on or before January 1, 1991.

CHAPTER 1614

An act to amend Section 4148 of the Business and Professions Code, to amend Sections 113, 471, and 25173.5 of, to add Article 5 (commencing with Section 25050), Article 6 (commencing with Section 25060), Article 7 (commencing with Section 25070), Article 8 (commencing with Section 25080), Article 9 (commencing with Section 25090), Article 10 (commencing with Section 25095), and Article 11 (commencing with Section 25099.1) to Chapter 6.1 of Division 20 of, to repeal and add Section 25117.5 of, and to repeal Sections 25117.6 and 25157.3 of, the Health and Safety Code, and to amend Sections 40191, 43211, and 43308 of the Public Resources Code, relating to health.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 4148 of the Business and Professions Code is amended to read:

4148. Any hypodermic needle or syringe which is to be disposed of, shall be contained, treated, and disposed of, pursuant to Chapter 6.1 (commencing with Section 25015) of Division 20 of the Health and Safety Code.

SEC. 2. Section 113 of the Health and Safety Code is amended to read:

113. (a) The fees or charges for the issuance or renewal of any permit, license, registration, or document pursuant to Sections 403, 436.53, 527, 1017, 1616, 1676, 1677, 2202, 2805, 4083, 11887, 23013, 25628, 25049, 25059, 25064, 25079.3, 25094, 25694, 25696, 25697, 25812.8, 25816, 25817, 26262, 26506.2, 26593.2, 26593.4, 26688, 27010, 27011, 28126, 28410, 28411, and 28702 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section. This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 3. Section 471 of the Health and Safety Code is amended to read:

471. Whenever a release, spill, escape, or entry of waste occurs as described in paragraph (2) of subdivision (b) of Section 470 and the director or the local health officer reasonably determines the waste is a hazardous waste or medical waste, or may become a hazardous waste or medical waste because of a combination or reaction with other substances or materials, and the director or local health officer reasonably determines that the release or escape is an immediate threat to the public health, the director may declare a health emergency and the local health officer may declare a county health emergency in the county or any area thereof affected by the threat to the public health. Whenever a local health emergency is declared by a local health officer pursuant to this section, the local health emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the board of supervisors. The board of supervisors shall review, at least every 14 days until the local health emergency is terminated, the need for continuing the local health emergency and shall proclaim the termination of the local health emergency at the earliest possible date that conditions warrant the termination.

SEC. 4. Article 5 (commencing with Section 25050) is added to Chapter 6.1 of Division 20 of the Health and Safety Code, as added by Assembly Bill 109, to read:

Article 5. Large Quantity Generator Requirements

25050. (a) Each large quantity generator, except as specified in subdivisions (b) and (c), shall register with the enforcement agency. Large quantity generators owning or operating a medical waste treatment facility shall also apply for a permit for that treatment facility pursuant to Article 7 (commencing with Section 25070).

(b) Large quantity generators operating as a business in the same building, or which are associated with a group practice in the same building, may register as one generator.

(c) Large quantity generators as specified in subdivision (a), operating in different buildings on the same or adjacent property, or as approved by the enforcement agency, may register as one generator.

(d) "Adjacent," for purposes of subdivision (c), means real property within 400 yards from the property boundary of the primary registration site.

25051. Large quantity generators subject to Section 25050 shall

register with the enforcement agency on or before April 1, 1991, if the generation of medical waste began prior to that date. In those cases where the generation of medical waste begins after April 1, 1991, registration shall be completed pursuant to this article prior to commencement of the generation of medical waste.

25052. Any large quantity generator required to register with the enforcement agency pursuant to Section 25050 shall file with the enforcement agency a medical waste management plan, on forms prescribed by the enforcement agency containing, but not limited to, all of the following:

(a) The name of the person.

(b) The business address of the person.

(c) The type of business.

(d) The types, and the estimated average monthly quantity, of medical waste generated.

(e) The type of treatment used onsite, if applicable. For generators with onsite medical waste treatment facilities, including incinerators or steam sterilizers or other treatment facilities as determined by the enforcement agency, the treatment capacity of the onsite treatment facility.

(f) The name and business address of the registered hazardous waste hauler used by the generator to have untreated medical waste removed for treatment, if applicable.

(g) The name and business address of the registered hazardous waste hauler service provided by the building management to which the building tenants may subscribe or are required by the building management to subscribe, if applicable.

(h) The name and business address of the offsite medical waste treatment facility to which the medical waste is being hauled, if applicable.

(i) An emergency action plan complying with regulations adopted by the department.

(j) A statement certifying that the information provided is complete and accurate.

25053. Large quantity generators shall be subject to at least annual inspection by the enforcement agency.

25054. (a) Each enforcement agency shall follow procedures consistent with this article in registering medical waste generators.

(b) Each medical waste registration issued by the enforcement agency shall be valid for one year.

(c) An application for renewal of the registration shall be filed with the enforcement agency not less than 90 days prior to the expiration date. Failure to meet this requirement shall result in an assessment of a late fee.

(d) Generators shall submit within 30 days an updated application form when any of the information specified in subdivisions (a) to (j), inclusive, of Section 25052 changes.

25055. A medical waste generator required to register pursuant to this article shall maintain individual treatment, and tracking

records, if applicable, for three years or for the period specified in the regulations.

25056. Containment and storage of medical waste shall be in accordance with Article 8 (commencing with Section 25080).

25057. Treatment of medical waste shall be in accordance with Article 9 (commencing with Section 25090).

25058. The fee schedule specified in Section 25059 shall be for the issuance of medical waste registrations and onsite medical waste treatment facility permits when the department serves as the enforcement agency for large quantity generators. This fee schedule shall be adjusted annually in accordance with Section 113. On or before January 1, 1993, the department may adjust by regulation the fees specified in Section 25059 to reflect the actual costs of implementing this article. Local enforcement agencies shall set fees which shall be sufficient to cover their costs in implementing this chapter with regard to large quantity generators.

25059. The registration and annual permit fee for large quantity generators shall be set in following amounts:

(a) A general acute care hospital, as defined in subdivision (a) of Section 1250, which has one or more beds, but not more than 99 beds, shall pay six hundred dollars ($600), a facility with 100 or more beds, but not more than 199 beds, shall pay eight hundred sixty dollars ($860), a facility with 200 or more beds, but not more than 250 beds shall pay one thousand one hundred dollars ($1,100), and a facility with 251 or more beds shall pay one thousand four hundred dollars ($1,400).

(b) A specialty clinic, providing surgical, dialysis, or rehabilitation services, as defined in subdivision (b) of Section 1204, shall pay three hundred fifty dollars ($350).

(c) A skilled nursing facility, as defined in subdivision (c) of Section 1250, which has one or more beds, but not more than 99 beds shall pay two hundred seventy-five dollars ($275), a facility with 100 or more beds, but not more than 199 beds shall pay three hundred fifty dollars ($350), and a facility with 200 or more beds shall pay four hundred dollars ($400).

(d) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250, shall pay two hundred dollars ($200).

(e) An intermediate care facility, as defined in subdivision (d) of Section 1250, shall pay three hundred dollars ($300).

(f) A primary care clinic, as defined in Section 1200.1, shall pay three hundred fifty dollars ($350).

(g) A licensed clinical laboratory, as defined in paragaph (3) of subdivision (a) of Section 1206 of the Business and Professions Code, shall pay two hundred dollars ($200).

(h) A health care service plan facility, as defined in subdivision (f) of Section 1345, shall pay three hundred fifty dollars ($350).

(i) A veterinary clinic or veterinary hospital shall pay two hundred dollars ($200).

(j) A large quantity generator medical office shall pay two

hundred dollars ($200).

SEC. 5. Article 6 (commencing with Section 25060) is added to Chapter 6.1 of Division 20 of the Health and Safety Code, as added by Assembly Bill 109, to read:

Article 6. Medical Waste Haulers

25060. All medical waste shall be hauled by either a registered hazardous waste hauler or by a person with an approved limited-quantity exemption granted pursuant to Section 25061.

25061. Medical waste generators may apply to the enforcement agency for a limited-quantity hauling exemption, if the generator meets all of the following requirements:

(a) The generator generates less than 20 pounds of medical waste per week, transports less than 20 pounds of medical waste at any one time, and has an information document on file in the generator's office pursuant to Section 25045.1.

(b) The generator transports the waste himself or herself, or directs a member of his or her staff to transport the waste, to a permitted medical waste treatment facility, a transfer station, or to another facility for the purpose of consolidation before treatment and disposal.

(c) The generator maintains a tracking document, as specified in Section 25063.

25062. (a) Except as otherwise exempted pursuant to Section 25061, all medical waste transported to an offsite medical waste treatment facility shall be transported in accordance with this article by a registered hazardous waste hauler issued a registration certificate pursuant to Article 6 (commencing with Section 25160) and Article 6.5 (commencing with Section 25167.1) of Chapter 6.5.

(b) Except for small quantity generators hauling medical waste pursuant to Section 25061, medical waste shall be transported to a medical waste offsite treatment facility or transfer station in leak-resistant and fully enclosed rigid containers in vehicle compartments.

(c) A person shall not transport medical waste in the same vehicle with other waste unless the medical waste is separately contained in rigid containers or kept separate by barriers from other waste, or unless all of the waste is to be handled as medical waste in accordance with the requirements of this chapter.

(d) Medical waste shall only be transported to a permitted medical waste treatment facility, or to a transfer station or another facility for the purpose of consolidation before treatment and disposal, pursuant to this chapter.

(e) Facilities for the transfer of medical waste shall be annually inspected and issued permits in accordance with the regulations adopted pursuant to this chapter.

(f) Any persons manually loading or unloading containers of medical waste shall be provided by their employer at the beginning

of each shift with, and shall be required to wear, clean and protective gloves and coveralls, changeable lab coats, or other protective clothing. The department may require, by regulation, other protective devices appropriate to the type of medical waste being handled.

25063. (a) A hazardous waste hauler shall maintain a completed tracking document of all medical waste removed for treatment or disposal. At the time the medical waste is received by a hazardous waste hauler, the hauler shall provide the medical waste generator with a copy of the tracking document for the generator's medical waste records. The hauler shall maintain its copy of the tracking document for three years.

(b) The tracking document shall include, but not be limited to, all of the following information:

(1) The name, address, and telephone number of the hauler, unless transported pursuant to Section 25061.

(2) The type and quantity of medical waste transported.

(3) The name of the generator.

(4) The name, address, telephone number, and the signature of an authorized representative of the permitted facility receiving the waste.

(c) Any hazardous waste hauler or generator transporting medical waste in a vehicle shall have a tracking document in his or her possession while transporting the waste. The tracking document shall be shown upon demand to any enforcement agency personnel or an officer of the Department of the California Highway Patrol. If the waste is transported by rail, vessel, or air, the railroad corporation, vessel operator, or airline shall enter on the shipping papers any information concerning the waste which the enforcement agency may require.

(d) A hazardous waste hauler or a generator transporting medical waste shall provide the facility receiving the medical waste with the original tracking document.

(e) Each hazardous waste hauler and each medical waste treatment facility shall provide tracking data periodically and in a format as determined by the department.

(f) Medical waste transported out of state shall be consigned to a medical waste treatment facility in the receiving state. Absent a permitted treatment facility in the receiving state or if the medical waste is crossing an international border, the waste shall be treated in accordance with Article 9 (commencing with Section 25090) prior to being transported out of the state.

25064. The annual permit fee for a transfer station issued a permit pursuant to subdivision (e) of Section 25062 is five hundred dollars ($500), or as provided in the regulations adopted pursuant to this chapter.

SEC. 6. Article 7 (commencing with Section 25070) is added to Chapter 6.1 of Division 20 of the Health and Safety Code, as added by Assembly Bill 109, to read:

Article 7. Medical Waste Treatment Facility Permits

25070. All offsite medical waste treatment facilities shall be permitted and inspected by the department. All onsite medical waste treatment facilities shall be permitted and inspected by the enforcement agency.

25070.1. On or before April 1, 1991, each person operating a medical waste treatment facility shall obtain a permit pursuant to this article from the department. If the medical waste treatment facility begins operation after April 1, 1991, the permit shall be obtained pursuant to this article prior to commencement of the treatment facility's operation.

25070.2. A health care facility accepting medical waste for treatment from the physicians and surgeons who are on the staff of the facility and who are small quantity generators shall be classified as an onsite treatment facility and shall be permitted and inspected by the enforcement agency.

25070.3. A health care facility accepting medical waste for treatment from small quantity generators which are adjacent to the facility shall be classified as an onsite treatment facility and shall be permitted and inspected by the enforcement agency.

25071. (a) Each enforcement agency shall follow procedures which are consistent with this article, and the regulations adopted pursuant to this article, when issuing medical waste permits.

(b) Each person operating a medical waste treatment facility pursuant to a hazardous waste facilities permit or grant of interim status pursuant to Article 9 (commencing with Section 25200) of Chapter 6.5, as of January 1, 1991, shall be considered to have the medical waste permit required by this article until January 1, 1992, unless the enforcement agency with jurisdiction over its activities has taken final action prior to January 1, 1992, on an application for a permit pursuant to this article.

(c) Each medical waste facility subject to subdivision (b) shall operate in accordance with the standards and procedures contained in this article, and on and after January 1, 1991, is not subject to the standards and procedures contained in Chapter 6.5 (commencing with Section 25100).

25072. Any person required to obtain a permit pursuant to this chapter shall file with the enforcement agency an application, on forms prescribed by the department, containing, but not limited to, all of the following:

(a) The name of the applicant.

(b) The business address of the applicant.

(c) The type of treatment provided, the treatment capacity of the facility, a characterization of the waste treated at this facility, and the estimated average monthly quantity of waste treated at the facility.

(d) A disclosure statement, as provided in Section 25112.5.

(e) Evidence satisfactory to the enforcement agency that the operator of the medical waste treatment facility has the ability to

comply with this chapter and the regulations adopted pursuant to this chapter.

(f) Any other information required by the enforcement agency for the administration or enforcement of this chapter or the regulations adopted pursuant to this chapter.

25072.5. (a) Prior to issuing or renewing a permit for an offsite medical waste treatment facility pursuant to Section 25070, the department shall review the compliance history of the applicant, under any local, state, or federal law or regulation governing the control of medical waste or pollution, including, but not limited to, the Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

(b) The department shall, pursuant to this section, deny a permit, or specify additional permit conditions, to ensure compliance with applicable rules and regulations, if the department determines that in the three-year period preceding the date of application the applicant has violated laws or regulations identified in subdivision (a) at a facility owned or operated by the applicant, and the violations demonstrate a recurring pattern of noncompliance or pose, or have posed, a significant risk to public health and safety or to the environment.

(c) In addition to any other information required to be submitted for the permitting of a facility pursuant to Section 25070, an applicant who has owned or operated a facility regulated by the department shall provide a description of all violations described in subdivision (a), which occurred at any facility permitted and owned or operated by the applicant in the state in the three years prior to the date of application.

(d) In making the determination of whether to deny a permit or to specify additional permit conditions pursuant to subdivision (b), the department shall take both of the following into consideration:

(1) Whether a permit denial or permit condition is appropriate or necessary given the severity of the violation.

(2) Whether the violation has been corrected in a timely fashion.

25073. On and after April 1, 1991, all persons operating a medical waste treatment facility shall maintain individual records for a period of three years and shall report or submit to the enforcement agency upon request, all of the following information:

(a) The type of treatment facility and its capacity.

(b) All treatment facility operating records.

(c) Copies of the tracking documents for all medical waste it receives for treatment from offsite generators or from hazardous waste haulers.

25074. (a) A medical waste permit issued by the enforcement agency to a medical waste treatment facility shall be valid for five years.

(b) An application for renewal of the permit shall be filed with the enforcement agency not less than 90 days prior to the expiration date. If a permittee fails to make a timely application for renewal, the medical waste permit shall expire on the expiration date.

25075. (a) A medical waste permit may be renewed if the enforcement agency finds the permittee has been in substantial compliance with this chapter and the regulations adopted pursuant to this chapter during the preceding permitted period or that the permittee corrected previous violations in a timely manner.

(b) Upon approval of the enforcement agency, a permit may be transferred from one subsidiary to another subsidiary of the same corporation, from a parent corporation to one of its subsidiaries, or from a subsidiary to a parent corporation.

25076. A person required to obtain a medical waste permit shall, at all times, possess a valid permit for each facility in operation. A medical waste permit shall terminate prior to its expiration date if suspended or revoked pursuant to Section 25099.1 or, notwithstanding Section 25099.2, if either of the following occurs:

(a) The permittee sells or otherwise transfers the facility, except as specified in subdivision (b) of Section 25075.

(b) The permittee surrenders the permit to the enforcement agency because the permittee ceases operation.

25077. The enforcement agency shall issue a medical waste permit upon evaluation, inspection, or records review of the applicant if the applicant is in substantial compliance with this chapter and the regulations adopted pursuant to this chapter and the applicant has corrected any previous violations. A decision to issue or not to issue the permit shall be made by the enforcement agency within 120 days of the time that the application is filed, unless waived by the applicant.

25078. When issuing, renewing, or revising any treatment facility permit, the enforcement agency may prohibit or condition the handling or treatment of medical waste to protect the public health and safety.

25079. An enforcement agency shall inform an applicant for a medical waste permit, in writing, upon the denial of any application for the permit. Within 20 days after the enforcement agency mails the notice, the applicant may present a written petition for a hearing to the enforcement agency. Upon receipt by the enforcement agency of the petition in proper form, the petition shall be set for hearing.

If the department is the enforcement agency, the proceedings shall commence with the filing of a statement of issues and shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department has all the powers granted to a department in that chapter.

If the department is not the enforcement agency, the hearings shall be held in accordance with the ordinance adopting the medical waste management program.

25079.1. The enforcement agency shall evaluate, inspect, and review the records of medical waste treatment facilities for compliance with this chapter.

25079.2. The fee schedule specified in Section 25079.3 shall cover the issuance of medical waste treatment facility permits and an inspection program, when the department serves as the enforcement agency. This fee schedule shall be adjusted annually in accordance with Section 113. On or before January 1, 1993, the department may adjust by regulation the fees specified in Section 25079.3 to reflect the actual costs of implementing this article. Local enforcement agencies shall set fees which shall be sufficient to cover their costs in implementing this chapter with regard to large quantity generators.

25079.3. (a) The annual permit fee for an offsite treatment facility shall be set at the following amount:

(1) The fee for an autoclave is ten thousand dollars ($10,000).

(2) The fee for an incinerator or other approved technology is fifteen thousand dollars ($15,000).

(b) The department shall charge an application fee for an offsite treatment facility equal to one hundred dollars ($100) for each hour the department spends processing the application, but not more than fifty thousand dollars ($50,000), or as provided in the regulations adopted by the department.

SEC. 7. Article 8 (commencing with Section 25080) is added to Chapter 6.1 of Division 20 of the Health and Safety Code, as added by Assembly Bill 109, to read:

Article 8. Containment and Storage

25080. To containerize or store medical waste, a person shall do all of the following:

(a) Medical waste shall be contained separately from other waste at the point of origin in the producing facility. Sharps containers may be placed in biohazard bags or in containers with biohazard bags.

(b) Biohazardous waste shall be contained in a red biohazard bag in accordance with Section 25081 conspicuously labeled with the words "Biohazardous Waste" or with the international biohazard symbol and the word "BIOHAZARD."

(c) Notwithstanding Section 25020.2, biohazard bags meeting the requirements specified in Section 66840 of Title 22 of the California Code of Regulations may also be used until July 1, 1992.

(d) Sharps waste shall be contained in a sharps container pursuant to subdivision (b) of Section 25081 and Section 25082.

25081. To containerize biohazardous waste in a biohazard bag, a person shall do all of the following:

(a) The bags shall be tied to prevent leakage or expulsion of contents during all future storage, handling, or transport.

(b) Biohazardous waste shall be bagged in accordance with subdivisions (b) and (c) of Section 25080 and placed for storage, handling, or transport in a rigid or disposable container. The container shall be leak resistant, have tight fitting covers, and be kept clean and in good repair. The container may be of any color and shall

be labeled with the words "Biohazardous Waste," or with the international biohazard symbol and the word "BIOHAZARD," on the lid and on the sides so as to be visible from any lateral direction. Containers meeting the requirements specified in Section 66840 of Title 22 of the California Code of Regulations may also be used until the replacement of the containers is necessary or existing stock has been depleted.

(c) All bagged biohazardous waste shall not be removed from the bag until treatment as prescribed in Article 9 (commencing with Section 25090) is completed. Biohazardous waste shall not be disposed of before being treated as prescribed in that Article 9.

(d) Biohazardous waste shall not be contained or stored above 0° Centigrade (32° Fahrenheit) for more than seven days without the written approval of the enforcement agency. A person may store biohazardous waste at or below 0° Centigrade (32° Fahrenheit) for not more than 90 days before treatment with the written approval of the enforcement agency. If the facility is unable to control the odor from its stored waste and the odor poses a public nuisance, the enforcement agency may require more frequent removal.

25082. To containerize sharps, a person shall do all of the following:

(a) Place all sharps waste into a sharps container.

(b) Tape closed or tightly lid full sharps containers ready for disposal to preclude loss of contents.

(c) Store sharps containers ready for disposal for not more than seven days without the written approval of the enforcement agency.

(d) Label sharps containers with the words "sharps waste" or with the international biohazard symbol and the word "BIOHAZARD."

25083. Any small quantity generator who has properly containerized the medical waste according to the requirements of this article may store the waste in a permitted common storage facility.

25084. A person shall thoroughly wash and decontaminate reusable rigid containers for medical waste by a method approved by the enforcement agency each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners, bags, or other devices removed with the waste. These containers shall be maintained in a clean and sanitary manner. Approved methods of decontamination include, but are not limited to, agitation to remove visible soil combined with one of the following procedures:

(a) Exposure to hot water of at least 82° Centigrade (180° Fahrenheit) for a minimum of 15 seconds.

(b) Exposure to chemical sanitizer by rinsing with, or immersion in, one of the following for a minimum of three minutes:

(1) Hypochlorite solution (500 ppm available chlorine).

(2) Phenolic solution (500 ppm active agent).

(3) Iodoform solution (100 ppm available iodine).

(4) Quaternary ammonium solution (400 ppm active agent).

25084.5. Any leak or spill of a medical waste by a medical waste generator, hazardous waste hauler, or treatment facility shall be decontaminated by procedures adopted by the department.

25085. A person shall not use reusable pails, drums, dumpsters, or bins used for medical waste for the containment of solid waste, or for other purposes, except after being decontaminated by the procedures specified in Section 25084 and removal of all medical waste labels.

25086. Any enclosure or designated accumulation area used for the storage of medical waste containers shall be secured so as to deny access to unauthorized persons and shall be marked with warning signs on, or adjacent to, the exterior of entry doors, gates, or lids. The storage area may be secured by use of locks on entry doors, gates, or receptacle lids.

The wording of warning signs shall be in English, "CAUTION—BIOHAZARDOUS WASTE STORAGE AREA—UNAUTHORIZED PERSONS KEEP OUT," and in Spanish, "CUIDADO—ZONA DE RESIDUOS—BIOLOGICOS PELIGROSOS—PROHIBIDA LA ENTRADA A PERSONAS NO AUTORIZADAS," or in another language, in addition to English, determined to be appropriate by the infection control staff or enforcement agency. Warning signs shall be readily legible during daylight from a distance of at least 25 feet.

Any enclosure or designated accumulation area shall provide medical waste protection from animals and natural elements and shall not provide a breeding place or a food source for insects or rodents.

25087. A person shall not use a trash chute to transfer medical waste.

25088. Compacters or grinders shall not be used to process medical waste until after the waste has been treated pursuant to Article 9 (commencing with Section 25090) and rendered solid waste, unless the grinding or compacting is an integral part of the treatment method, approved by the department.

Medical waste in bags or other disposable containers shall not be subject to compaction by any compacting device and shall not be placed for storage or transport in a portable or mobile trash compactor.

SEC. 8. Article 9 (commencing with Section 25090) is added to Chapter 6.1 of Division 20 of the Health and Safety Code, as added by Assembly Bill 109, to read:

Article 9. Treatment

25090. A person generating or treating medical waste shall ensure that the medical waste is treated by one of the following methods, thereby rendering it solid waste, which is not otherwise hazardous, prior to disposal:

(a) Incineration at a permitted medical waste treatment facility

in a controlled-air, multichamber incinerator, or other method of incineration approved by the department which provides complete combustion of the waste into carbonized or mineralized ash. Monitoring for release of airborne pathogens from medical waste incinerators shall be conducted as prescribed by the department.

(b) (1) Discharge to a public sewage system if the medical waste is liquid or semiliquid, and not either of the following:

(A) Liquid or semiliquid laboratory waste, as defined in subdivision (a) of Section 25020.5.

(B) Microbiological specimens, including those specified in subdivision (b) of Section 25020.5.

(2) Medical waste discharge shall be consistent with the waste discharge requirements placed on the public sewer system by the California regional water quality control board with jurisdiction.

(c) Steam sterilization at a permitted medical waste treatment facility or by other sterilization, in accordance with all of the following operating procedures for steam sterilizers or other sterilization:

(1) Standard written operating procedures shall be established for biological indicators, or for other indicators of adequate sterilization approved by the department, for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure on container, pattern of loading, water content, and maximum load quantity.

(2) Recording or indicating thermometers shall be checked during each complete cycle to ensure the attainment of 121° Centigrade (250° Fahrenheit) for at least one-half hour, depending on the quantity and density of the load, in order to achieve sterilization of the entire load. Thermometers shall be checked for calibration annually. Records of the calibration checks shall be maintained as part of the facility's files and records for a period of three years or for the period specified in the regulations.

(3) Heat-sensitive tape, or another method acceptable to the enforcement agency, shall be used on each container that is processed to indicate the attainment of adequate sterilization conditions.

(4) The biological indicator Bacillus stearothermophilus, or other indicator of adequate sterilization as approved by the department, shall be placed at the center of a load processed under standard operating conditions at least monthly to confirm the attainment of adequate sterilization conditions.

(5) Records of the procedures specified in paragraphs (1), (2), and (4) shall be maintained for a period of not less than three years.

(d) Other alternative medical waste treatment methods which are both of the following:

(1) Approved by the department.

(2) Result in the destruction of pathogenic microorganisms.

Any alternative medical waste treatment method proposed to the department shall be evaluated by the department and either

approved or rejected pursuant to the criteria specified in this subdivision.

25090.5. Recognizable human anatomical remains, with the exception of teeth not deemed infectious by the attending physician and surgeon, or dentist shall be disposed of by incineration or interment unless otherwise hazardous.

25091. Hypodermic needles shall be either incinerated and disposed of as solid waste, or otherwise rendered noninfectious, encased in a solid or semisolid material, and disposed of as solid waste. Disposal of this waste as solid waste shall be permitted if the waste is not otherwise hazardous.

25091.5. An operator of a hazardous waste incinerator permitted pursuant to Section 25200 may also accept medical waste for incineration.

25092. Each medical waste treatment facility issued a medical waste permit shall provide the enforcement agency with an emergency action plan which the facility shall follow to ensure the proper disposal of medical waste in the event of equipment breakdowns, natural disasters, or other occurrences.

25093. Notwithstanding Section 9141 of the Food and Agricultural Code, animals that die from infectious diseases shall be treated in accordance with Section 25090 if, in the opinion of the attending veterinarian or local health officer, the carcass presents a danger of infection to humans.

25094. The department shall charge an application fee for evaluation of an alternative treatment technology pursuant to subdivision (d) of Section 25090 equal to one hundred dollars ($100) per hour for each hour the department spends processing the application, but not more than a total of one thousand dollars ($1,000), or as provided in the regulations adopted by the department.

SEC. 9. Article 10 (commencing with Section 25095) is added to Chapter 6.1 of Division 20 of the Health and Safety Code, as added by Assembly Bill 109, to read:

Article 10. Enforcement

25095. (a) In order to carry out the purpose of this chapter, any authorized representative of the enforcement agency may do any of the following:

(1) Enter and inspect a facility for which a medical waste permit or registration has been issued, for which a medical waste permit or registration application has been filed, or which is subject to registration or permitting requirements pursuant to this chapter. Enter and inspect a vehicle for which a hazardous waste hauler registration has been issued or a limited-quantity exemption granted, for which an application has been filed for a hazardous waste hauler registration or a limited-quantity exemption, or which is subject to registration requirements pursuant to this chapter.

(2) Inspect and copy any records, reports, test results, or other information related to the requirements of this chapter or the regulations adopted pursuant to this chapter.

(b) The inspection shall be made with the consent of the owner or possessor of the facilities or, if consent is refused, with a warrant duly issued pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be made without consent or the issuance of a warrant.

25096. An enforcement agency may bring an action to enjoin the violation, or threatened violation, of this chapter or the regulations adopted pursuant to this chapter, in the superior court in the county in which the violation occurred or is about to occur. Any proceeding under this section shall be in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the enforcement agency is not required to allege facts necessary to show or tending to show the lack of an adequate remedy at law or irreparable damage or loss.

With respect to any action brought pursuant to this section alleging actual violation of this chapter or the regulations adopted pursuant to this chapter, the court shall, if it finds the allegations to be true, issue its order enjoining the continuance of the violation.

25096.1. Whenever the enforcement agency determines that a violation or threatened violation of this chapter or the regulations adopted pursuant to this chapter has resulted, or is likely to result, in a release of medical waste into the environment, the agency may issue an order to the responsible person specifying a schedule for compliance or imposing an administrative penalty of not more than one thousand dollars ($1,000) per violation. Any person who, after notice and an opportunity for hearing, violates an order issued pursuant to this section is guilty of a misdemeanor. The department shall adopt regulations which specify the requirements for providing notice to persons to whom orders are issued and for administrative hearings and fines concerning these orders.

SEC. 10. Article 11 (commencing with Section 25099.1) is added to Chapter 6.1 of Division 20 of the Health and Safety Code, as added by Assembly Bill 109, to read:

Article 11. Suspension or Revocation

25099.1. The enforcement agency may suspend, amend, or revoke any medical waste permit issued by the enforcement agency for any of the following reasons:

(a) Violation by the permittee of any of the provisions of this chapter or any regulation adopted pursuant to this chapter.

(b) Violation of any term or condition of the permit.

(c) Aiding, abetting, or permitting the violation specified in subdivision (a) or (b) or interference in the performance of the duty of the enforcement officer.

(d) Proof that the permittee has intentionally made false statements, or failed to disclose fully all relevant facts, in any material regard, on the application for a medical waste permit.

(e) The conviction of a permittee, or the person in charge of the activity subject to the medical waste permit, of any crime which is substantially related to the qualifications or duties of the permittee or the person in charge of the activity, or which is substantially related to the functions which are subject to the medical waste permit.

For purposes of this section, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action to revoke or suspend the medical waste permit may be taken when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal. That action may also be taken when an order granting probation is made suspending the imposition of sentence, notwithstanding any subsequent order pursuant to Section 1203.4 of the Penal Code. The enforcement agency shall take into account all competent evidence of rehabilitation furnished by the permittee or person in charge of the permitted activity.

(f) A change in any condition that requires either a temporary or permanent modification, reduction, or termination of the permitted operation to bring it into compliance with the requirements of this chapter and the regulations adopted pursuant to the chapter.

25099.2. Proceedings conducted by the department for the suspension or revocation of a medical waste permit shall commence with the filing of any accusation and shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted to a department in that chapter.

25099.3. The enforcement agency may temporarily suspend a medical waste permit prior to any hearing, when it has determined that this action is necessary to protect the public welfare. The enforcement agency shall notify the permittee of the temporary suspension and the effective date thereof and, at the same time, shall serve the permittee with an accusation.

Upon receipt of a notice of defense by the permittee, the matter shall, within 15 days, be set for hearing. The hearing shall be held as soon as possible, but not later than 30 days after receipt of the notice.

The temporary suspension shall remain in effect until the hearing is completed and the enforcement agency has made a final determination on the merits. However, the temporary suspension is vacated if the enforcement agency fails to make a final determination on the merits within 60 days after the original hearing has been completed.

SEC. 11. Section 25117.5 of the Health and Safety Code is repealed.

SEC. 12. Section 25117.5 is added to the Health and Safety Code, to read:

25117.5. Waste which is hazardous only because it is medical waste as defined in the Medical Waste Management Act (Chapter 6.1 (commencing with Section 25015)) shall not be governed by, subject to fees assessed by, or otherwise subject to, the requirements of this chapter or regulations adopted pursuant to this chapter.

SEC. 13. Section 25117.6 of the Health and Safety Code is repealed.

SEC. 14. Section 25157.3 of the Health and Safety Code is repealed.

SEC. 15. Section 25173.5 of the Health and Safety Code is amended to read:

25173.5. (a) Except as provided in subdivision (b), the legislative body of a city or county may impose and enforce a tax, for general purposes, or may impose a user fee on the operation of an offsite, multiuser hazardous waste facility located within the jurisdiction of the city or county. The tax or the user fee imposed shall not exceed 10 percent of the facility's annual gross receipts for the treatment, storage, or disposal of hazardous waste at the facility.

If a city or county imposes a tax pursuant to this section, the city or county may use the revenues collected from the tax to fund those activities reasonably necessary for the city or county to carry out its duties related to the operation of the hazardous waste facility upon which the tax is imposed and for support of the city's or county's fire and emergency response capabilities and emergency medical services, to the extent the city or county determines that this funding should be given priority.

(b) A city or county shall not impose a tax or a user fee adopted pursuant to subdivision (a) upon any of the following:

(1) An existing hazardous waste facility for which a tax is authorized pursuant to Section 25149.5.

(2) That portion of the gross receipts of the hazardous waste facility that derives from the recycling of hazardous wastes or the treatment of infectious wastes or other medical wastes.

SEC. 16. Section 40191 of the Public Resources Code, as added by Chapter 1096 of the Statutes of 1989, is amended to read:

40191. (a) Except as provided in subdivision (b), "solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.

(b) "Solid waste" does not include hazardous waste or low-level radioactive waste regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code.

(c) "Solid waste" does not include medical waste which is regulated pursuant to the Medical Waste Management Act (Chapter 6.1 (commencing with Section 25015) of Division 20 of the Health

and Safety Code), provided that the medical waste, whether treated or untreated, is not disposed of at a solid waste facility. Medical waste which has been treated and which is deemed to be sold waste shall be regulated pursuant to this division.

SEC. 17. Section 43211 of the Public Resources Code is amended to read:

43211. For those facilities which accept both hazardous wastes and other solid wastes, the State Department of Health Services shall exercise enforcement and regulatory powers relating to the control of the hazardous wastes at the facility pursuant to Chapter 6.1 (commencing with Section 25015) and Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20 of the Health and Safety Code. The board shall, at mixed waste disposal facilities, exercise enforcement and regulatory powers relating to the control of solid wastes other than hazardous wastes at the facility pursuant to this chapter.

SEC. 18. Section 43308 of the Public Resources Code is amended to read:

43308. For those facilities which accept only hazardous wastes and to which Chapter 6.1 (commencing with Section 25015) and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code apply, or which accept only low-level radioactive wastes and to which Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code applies, or for those facilities which accept both, the board shall have no enforcement or regulatory authority. Except as otherwise provided in Section 40052, all enforcement activities for those facilities relative to the control of hazardous wastes or low-level radioactive wastes shall be performed by the State Department of Health Services pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 or pursuant to Chapter 7.6 (commencing with Section 25800) of Division 20 of the Health and Safety Code.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 20. It is the intent of the Legislature that Sections 4, 5, 6, 7, 8, 9, and 10 of this bill and Sections 1, 2, 3 of Assembly Bill 109 of the 1989–90 Regular Session comprise a single, integrated, and complementary approach to the storage, treatment, transportation, and disposal of medical waste.

SEC. 21. This act shall be operative only if Assembly Bill 109 is enacted and becomes operative on or before January 1, 1991.

CHAPTER 1615

An act to add Chapter 8 (commencing with Section 3081.1) to Title 14 of Part 4 of Division 3 of the Civil Code, relating to liens.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 8 (commencing with Section 3081.1) is added to Title 14 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 8. DESIGN PROFESSIONALS' LIENS

3081.1. For purposes of this chapter, "design professional" means any certificated architect, registered professional engineer, or licensed land surveyor who furnishes services pursuant to a written contract with a landowner for the design, engineering, or planning of a work of improvement.

Except as otherwise expressly provided, the definition in this section does not apply to, or limit or expand the meaning of, provisions of law other than this chapter.

3081.2. A design professional shall, from the date of recordation pursuant to Section 3081.3, have a lien upon the real property for which the work of improvement is planned to be constructed, notwithstanding the absence of commencement of actual construction of the planned work of improvement, if the landowner contracted for the design professional's services and is also the owner of the real property at the time of recordation of the lien. The lien of the design professional shall be for the amount of the design professional's fee for any services rendered prior to commencement of the work of improvement or the reasonable value of those services, whichever is less. The amount of the lien shall be reduced by the amount of any deposit or prior payments, as specified by a written contract entered into by the design professional and by the landowner or his or her agent. However, no lien shall arise pursuant to this chapter, and a design professional may not record a notice of lien pursuant to subdivision (c) of Section 3081.3, unless a building permit or other governmental approval in furtherance of the work of improvement has been obtained in connection with or utilizing the services rendered by the design professional.

3081.3. In order for the design professional to be entitled to a lien pursuant to Section 3081.2, all of the following shall occur:

(a) The landowner defaults in any payment required pursuant to the terms of the written contract or refuses to pay upon the demand of the design professional made in accordance with the written contract.

(b) Not less than 10 days prior to recordation pursuant to

subdivision (c), the design professional mails by first-class registered or certified mail, postage prepaid, addressed to the landowner, a written demand for payment specifying that a default has occurred pursuant to the contract or agreement and the amount of the default.

(c) The design professional records, in the office of the county recorder in the county in which the real property or some portion thereof is located, a notice of lien which specifies that a lien is created in favor of the named design professional, specifies the amount thereof, identifies the current owner of record of the real property, provides a legal description of the real propery to be improved, and specifies the building permit or other governmental approval for the work of improvement required as a condition of recording the notice of lien by Section 3081.2.

3081.4. (a) Upon recordation of the notice of lien pursuant to subdivision (c) of Section 3081.3, a lien is created in favor of the named design professional.

(b) The lien created pursuant to subdivision (a) shall automatically expire and be null and void and of no further force or effect on the occurrence of either of the following:

(1) The commencement of the work of improvement for which the design professional furnished services at the request of the landowner.

(2) The expiration of 90 days after recording the notice of lien, unless the design professional files suit to enforce the lien within 90 days of recordation.

(c) In the event the landowner partially or fully satisfies the lien of the design professional, the design professional shall execute and record a document which evidences a partial or full satisfaction and release of the lien, as the case may be.

3081.5. Any design professionals' lien perfected pursuant to this chapter shall be enforced pursuant to the provisions contained in Article 7 (commencing with Section 3143) of Chapter 2 of Title 15.

3081.6. This chapter does not affect the ability of a design professional to obtain a mechanic's lien pursuant to Title 15 (commencing with Section 3082) of this part.

3081.7. A design professional shall record a notice of lien pursuant to subdivision (c) of Section 3081.3 no later than 90 days after the design professional knows or has reason to know that the landowner is not commencing the work of improvement.

3081.8. The lien of a design professional perfected pursuant to this chapter shall not affect the ability of the design professional to pursue other remedies.

3081.9. (a) No lien created by this chapter shall affect or take priority over the interest of record of a purchaser, lessee, or encumbrancer, if the interest of the purchaser, lessee, or encumbrancer in the real property was duly recorded before recordation of the design professionals' lien.

(b) No lien created by this chapter shall affect or take priority over an encumbrance of a construction lender which funds the loan

to commence the work of improvement for which the design professional furnished services at the request of the landowner.

3081.10. The design professionals' lien provided in this chapter shall not apply to a work of improvement relating to a single-family owner occupied residence where the construction costs are less than one hundred thousand dollars ($100,000) in value.

SEC. 2. It is the intent of the Legislature to establish the exclusive lien remedy for design professionals in cases where no actual construction of the planned work of improvement is commenced prior to recordation of the notice of lien, and to thereby disapprove and supplant any lien remedy provided by the court decision of In re Morrell (D.C. 1984) 42 Bankruptcy Rep. 973.

CHAPTER 1616

An act to add Section 387 to the Penal Code, relating to crime.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the California Corporate Criminal Liability Act of 1989.

SEC. 2. Section 387 is added to the Penal Code, to read:

387. (a) Any corporation, or person who is a manager with respect to a product, facility, equipment, process, place of employment, or business practice, is guilty of a public offense punishable by imprisonment in the county jail for a term not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment; or by imprisonment in the state prison for 16 months, two, or three years, or by a fine not exceeding twenty-five thousand dollars ($25,000); or by both that fine and imprisonment, but if the defendant is a corporation the fine shall not exceed one million dollars ($1,000,000), if that corporation or person does all of the following:

(1) Has actual knowledge of a serious concealed danger that is subject to the regulatory authority of an appropriate agency and is associated with that product or a component of that product or business practice.

(2) Knowingly fails during the period ending 15 days after the actual knowledge is acquired, or if there is imminent risk of great bodily harm or death, immediately, to do both of the following:

(A) Inform the Division of Occupational Safety and Health in the Department of Industrial Relations in writing, unless the corporation or manager has actual knowledge that the division has been so informed.

Where the concealed danger reported pursuant to this paragraph

is subject to the regulatory authority of an agency other than the Division of Occupational Safety and Health in the Department of Industrial Relations, it shall be the responsibility of the Division of Occupational Safety and Health in the Department of Industrial Relations, within 24 hours of receipt of the information, to telephonically notify the appropriate government agency of the hazard, and promptly forward any written notification received.

(B) Warn its affected employees in writing, unless the corporation or manager has actual knowledge that the employees have been so warned.

The requirement for disclosure is not applicable if the hazard is abated within the time prescribed for reporting, unless the appropriate regulatory agency nonetheless requires disclosure by regulation.

Where the Division of Occupational Safety and Health in the Department of Industrial Relations was not notified, but the corporation or manager reasonably and in good faith believed that they were complying with the notification requirements of this section by notifying another government agency, as listed in paragraph (8) of subdivision (d), no penalties shall apply.

(b) As used in this section:

(1) "Manager" means a person having both of the following:

(A) Management authority in or as a business entity.

(B) Significant responsibility for any aspect of a business which includes actual authority for the safety of a product or business practice or for the conduct of research or testing in connection with a product or business practice.

(2) "Product" means an article of trade or commerce or other item of merchandise which is a tangible or an intangible good, and includes services.

(3) "Actual knowledge," used with respect to a serious concealed danger, means has information that would convince a reasonable person in the circumstances in which the manager is situated that the serious concealed danger exists.

(4) "Serious concealed danger," used with respect to a product or business practice, means that the normal or reasonably foreseeable use of, or the exposure of an individual to, the product or business practice creates a substantial probability of death, great bodily harm, or serious exposure to an individual, and the danger is not readily apparent to an individual who is likely to be exposed.

(5) "Great bodily harm" means a significant or substantial physical injury.

(6) "Serious exposure" means any exposure to a hazardous substance, when the exposure occurs as a result of an incident or exposure over time and to a degree or in an amount sufficient to create a substantial probability that death or great bodily harm in the future would result from the exposure.

(7) "Warn its affected employees" means give sufficient description of the serious concealed danger to all individuals working

for or in the business entity who are likely to be subject to the serious concealed danger in the course of that work to make those individuals aware of that danger.

(8) "Appropriate government agency" means an agency on the following list that has regulatory authority with respect to the product or business practice and serious concealed dangers of the sort discovered:

(A) The Division of Occupational Safety and Health in the Department of Industrial Relations.

(B) State Department of Health Services.

(C) Department of Agriculture.

(D) County departments of health.

(E) The United States Food and Drug Administration.

(F) The United States Environmental Protection Agency.

(G) The National Highway Traffic Safety Administration.

(H) The Federal Occupation Safety and Health Administration.

(I) The Nuclear Regulatory Commission.

(J) The Consumer Product Safety Commission.

(K) The Federal Aviation Administration.

(L) The Federal Mine Safety and Health Review Commission.

(c) Notification received pursuant to this section shall not be used against any manager in any criminal case, except a prosecution for perjury or for giving a false statement.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1617

An act to repeal Section 66784.4 of the Government Code, and to amend Sections 44009 and 50002 of, to add Section 50000.5 to, and to repeal and add Section 50000 of, the Public Resources Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 66784.4 of the Government Code is repealed.

SEC. 2. Section 44009 of the Public Resources Code is amended to read:

44009. The board shall, in writing, concur or object to the issuance, modification, or revision of any solid waste facilities permit within 60 days of the board's receipt of any proposed solid waste facilities permit submitted under Section 44007 after consideration of the issues in this section. If the board determines that the permit is not consistent with state standards, it shall object to provisions of the permit, and shall submit such objections to the enforcement agency for its consideration. Until a countywide integrated waste management plan has been approved by the board pursuant to this division, if the board determines, based on substantial evidence in the record, that issuance of the permit would prevent or substantially impair achievement of the requirements prescribed in Section 41780, the board shall object to the permit and shall submit its determination and specific objections to the enforcement agency, the applicant, and the city or county within which the facility is located for their consideration. If the board fails to concur or object in writing within 60 days, it shall be deemed to have concurred in the issuance of the permit as submitted to it.

SEC. 3. Section 50000 of the Public Resources Code is repealed.

SEC. 4. Section 50000 is added to the Public Resources Code, to read:

50000. (a) Until a countywide integrated waste management plan has been approved by the California Integrated Waste Management Board pursuant to Division 30 (commencing with Section 40000), no person shall establish a new solid waste facility or transformation facility or expand an existing solid waste facility or transformation facility which will result in a significant increase in the amount of solid waste handled at the facility without a certification by the local enforcement agency that one of the following has occurred:

(1) The facility is identified and described in or found to conform with a county solid waste management plan which was in compliance with the law and regulations existing on December 31, 1989, adopted pursuant to former Title 7.3 (commencing with Section 66700) of the Government Code as it read on December 31, 1989. The conformance finding with that plan shall be in accordance with the procedure for a finding of conformance which was set forth in the plan prior to January 1, 1990.

(2) The facility is identified and described in the most recent county solid waste management plan which has been approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which

case, the plan has been approved by the county and by the city which contains a majority of the population of the incorporated area of the county.

(3) Pursuant to the procedures in subdivision (b), the facility has been approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which case, the facility has been approved by the county and by the city which contains a majority of the population of the incorporated area of the county.

(4) The facility is a material recovery facility and the site identification and description of the facility has been submitted to the task force created pursuant to Section 40950 for review and comment, pursuant to the procedures set forth in subdivision (c). For purposes of this paragraph, "material recovery facility" means a transfer station which is designed to, and, as a condition of its permit, shall, recover for reuse or recycling at least 15 percent of the total volume of material received by the facility.

(b) (1) The review and approval of a solid waste facility or transformation facility which has not been identified or described in a county solid waste management plan shall be initiated by submittal by the person or agency proposing the facility of a site identification and description to the county board of supervisors.

(2) The county shall submit the site identification and description to each city within the county within 20 days from the date that the site identification and description is submitted to the county board of supervisors. The county and each city shall approve or disapprove by resolution the site identification and description within 90 days after the site identification and description is initially submitted to the county or city. Each city shall notify the county board of supervisors of its decision within that 90-day period. If the county or a city fails to approve or disapprove the site identification and description within 90 days, the city or county shall be deemed to have approved the site identification and description as submitted.

(3) If a city or county disapproves the site identification and description, the city or county shall mail notice of its decision by first-class mail to the person or agency requesting the approval within 10 days of the disapproval by the city or county, stating its reasons for the disapproval.

(4) No county or city shall disapprove a proposed site identification and description for a new solid waste facility or transformation facility or an expanded solid waste facility or transformation facility which will result in a significant increase in the amount of solid waste handled at the facility unless it determines, based upon substantial evidence in the record, that there will be one or more significant adverse impacts within its boundaries from the proposed project.

(5) Within 45 days of a decision by a city or county to disapprove a site identification and description, or a decision by the board not

to concur in the issuance of a permit pursuant to Section 44009, any person may file with the superior court a writ of mandate for review of the decision. The evidence before the court shall consist of the record before the city or county which disapproved the site identification and description or the record before the board in its determination not to concur in issuance of the permit. Section 1094.5 of the Code of Civil Procedure shall govern the proceedings conducted pursuant to this subdivision.

(c) To initiate the review and comment by the task force required by paragraph (4) of subdivision (a) and subdivision (d), the person or agency proposing the facility shall submit the site identification and description of the facility to the task force. Within 90 days after the site identification and description is submitted to the task force, the task force shall meet and comment on the facility in writing. Those comments shall include, but are not limited to, the relationship between the proposed new or expanded material recovery facility and the requirements of Section 41780. The task force shall transmit those comments to the applicant, to the county, and to all of the cities in the county.

(d) On or before February 1, 1991, each county, by vote of the board of supervisors and the majority of the cities in the county containing a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which case the vote is subject to approval of the city which contains a majority of the population of the incorporated area of the county, shall adopt two resolutions after holding a public hearing. One resolution shall address solid waste transfer facilities which are designed to, and, as a condition of their permits, shall, recover for reuse or recycling less than 15 percent of the total volume of material received by the facility and which serve more than one jurisdiction. The second resolution shall address solid waste transfer facilities which are designed to, and, as a condition of their permits, shall, recover for reuse or recycling less than 15 percent of the total volume of material received by the facility and which serve only one jurisdiction. These resolutions shall specify whether the facilities shall be subject to the review and approval process described in subdivision (b) or the review and comment process described in subdivision (c). If the resolutions required by this subdivision are not adopted on or before February 1, 1991, those facilities shall be subject to the review process described in subdivision (c).

For purposes of this subdivision, a facility serves only one jurisdiction if it serves only one city, only the unincorporated area of one county, or only one city and county.

SEC. 5. Section 50000.5 is added to the Public Resources Code, to read:

50000.5. (a) Until a countywide integrated waste management plan has been approved by the California Integrated Waste Management Board pursuant to Division 30 (commencing with Section 40000), no person shall establish or expand a solid waste

facility or transformation facility unless the city or county in which the site is located makes a finding that the establishment or expansion of the facility is consistent with the applicable general plan of the city or county. This finding shall not be made unless the city or county has adopted a general plan which complies with the provisions of Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(b) In addition to the requirements in subdivision (a), any new or expanded solid waste disposal facility or transformation facility shall be deemed to be consistent with the general plan only if both of the following requirements are met:

(1) The facility is located in a land use area designated or authorized for solid waste facilities in the applicable city or county general plan.

(2) The land uses which are authorized adjacent to, or near, the facility are compatible with the establishment, or expansion of, the solid waste disposal facility or transformation facility.

SEC. 6. Section 50002 of the Public Resources Code is amended to read:

50002. (a) The California Integrated Waste Management Board may, by regulation, specify classifications of solid waste facilities that are exempt from the requirements of Sections 50000, 50000.5, and 50001. The regulation may be adopted only if the board makes all of the following findings:

(1) The exemption is not contrary to the public interest.

(2) The quantity of solid wastes to be disposed of at each site is insignificant.

(3) The nature of the solid wastes poses no significant threat to the public health, the public safety, or the environment.

(b) The application to land of agricultural products derived from municipal sewage sludge for use as a fertilizer material, based on a finding by the board that the nature of the solid waste poses no significant threat to the public health, the public safety, or the environment, is exempt from the requirements of Sections 50000 and 50000.5.

SEC. 7. Nothing in this chapter is intended to circumvent the application of or compliance with other federal, state, and local laws, rules, and regulations, including, but not limited to, the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 9. This act is an urgency statute necessary for the

immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify the provisions regulating solid waste and encourage source reduction and recycling, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1618

An act to amend Section 24357.8 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 24357.8 of the Revenue and Taxation Code is amended to read:

24357.8. (a) In the case of a qualified research contribution, the amount otherwise allowed as a deduction under Section 24357, shall be reduced by that amount of the reduction provided by Section 24357.1 which is no greater than the sum of the following:

(1) One-half of the amount computed pursuant to Section 24357.1 (computed without regard to this paragraph).

(2) The amount (if any) by which the charitable contribution deduction under this section for any qualified research contribution (computed by taking into account the amount determined by paragraph (1), but without regard to this paragraph) exceeds twice the basis of the property.

(b) For purposes of this section, "qualified research contribution" means a charitable contribution by a taxpayer of tangible personal property described in paragraph (1) of Section 1221 of the Internal Revenue Code of 1954, but only if all of the following conditions are met:

(1) The contribution is to an educational organization which is described in subsection (b) (1) (A) (ii) of Section 170 of the Internal Revenue Code of 1954 and which is an institution of higher education (as defined in Section 3304 (f) of the Internal Revenue Code of 1954) in California.

(2) The contribution is made not later than two years after the date the construction of the property is substantially completed.

(3) The original use of the property is by the donee.

(4) The property is scientific equipment or apparatus substantially all of the use of which by the donee is for research or experimentation (within the meaning of Sections 24365 to 24368, inclusive), or for research training, in physical, applied, or biological

sciences, or for instructional purposes.

(5) The property is not transferred by the donee in exchange for money, other property, or services.

(6) The taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with this section, and with respect to property substantially all of the use of which is for instructional purposes, the taxpayer receives from the donee a written statement representing that the property will be used as an integral part of the instructional program. In the case of a computer, the statement shall also represent that the donee has acquired or will acquire, necessary basic operational software and the means to provide trained staff to utilize the property.

(7) The contribution is made on or after July 1, 1983, and on or before December 31, 1993.

(8) The taxpayer shall report to the Franchise Tax Board, on forms prescribed by the board, the name and address of the recipient educational organization, a description of the qualified charitable contribution, the fair market value of the contribution, and the date the contribution was made. The taxpayer shall forward a copy of the forms, along with the written statements prescribed in paragraph (6), to the following:

(A) The President of the University of California, in the case of contributions to institutions within the University of California system.

(B) California Postsecondary Education Commission, in the case of contributions to private institutions.

(C) The Chancellor of the California State University, in the case of contributions to institutions within the California State University system.

(D) The Chancellor of the California Community Colleges, in the case of contributions to institutions within the California Community College system.

(c) For purposes of this section, the term "taxpayer" shall not include a service organization (as defined in Section 414(m)(3) of the Internal Revenue Code of 1954).

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1619

An act to amend Section 2 of Chapter 1327 of the Statutes of 1986, as amended by Chapter 629 of the Statutes of 1988, relating to local agencies.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 2 of Chapter 1327 of the Statutes of 1986, as amended by Chapter 629 of the Statutes of 1988, is amended to read:

Sec. 2. The sum of three hundred forty-five thousand dollars ($345,000) is appropriated from the General Fund to the Controller for purposes of loaning that sum to the Local Agency Self-Insurance Authority to pay for original operating costs. The Local Agency Self-Insurance Authority shall begin repayment of this amount to the General Fund not later than December 31, 1992, together with interest at the same rate as the Pooled Money Investment Account. No later than July 1, 1991, the Local Agency Self-Insurance Authority shall submit to the appropriate policy committees of the Legislature a report on how the program will become self-supporting on a long-term basis. This report shall also include a repayment schedule with repayment to the state beginning no later than December 31, 1992.

The Local Agency Self-Insurance Authority shall file a copy of its annual financial statement with the Controller each year until the balance of the loan and interest have been repaid.

CHAPTER 1620

An act to amend Sections 331, 332, 1050, 4902, and 4904 of, and to repeal Section 4905 of, the Fish and Game Code, relating to game, and making an appropriation therefor.

[Approved by Governor September 30, 1990. Filed with Secretary of State September 30, 1990.]

The people of the State of California do enact as follows:

SECTION 1. Section 331 of the Fish and Game Code is amended to read:

331. The commission may determine and fix the area or areas, the seasons and hours, the bag and possession limit, and the sex and total number of antelope (Antilocapra americana) that may be taken under regulations which the commission may adopt from time to time. Only a resident of the State of California possessing a valid

hunting license, who has not taken an antelope under these provisions during the 10 years immediately preceding, may obtain a license tag for the taking of antelope. Only one license tag may be issued to any one individual in any 10-year period.

A license tag may be issued upon payment of a fee of fifty-five dollars ($55), as adjusted under Section 713. The fee shall be deposited in the Fish and Game Preservation Fund and shall be expended, in addition to money budgeted for salaries of persons in the department, for the expense of implementing this section.

SEC. 2. Section 332 of the Fish and Game Code is amended to read:

332. (a) The commission may determine and fix the area or areas, the seasons and hours, the bag and possession limit, and the number of elk that may be taken under rules and regulations which the commission may adopt from time to time. The commission may authorize the taking of tule elk if the average of the department's statewide tule elk population estimates exceeds 2,000 animals, or the Legislature determines, pursuant to the reports required by Section 3951, that suitable areas cannot be found in California to accommodate that population in a healthy condition.

(b) Only a resident of the State of California possessing a valid hunting license may obtain a license tag for the taking of elk.

(c) The department may issue an elk license tag upon payment of a fee of one hundred sixty-five dollars ($165), as adjusted under Section 713. The fees shall be deposited in the Fish and Game Preservation Fund and shall be expended, in addition to money budgeted for salaries of the department, for the expense of implementing this section and Section 3951.

(d) The commission shall annually direct the department to authorize not more than three elk hunting license tags for the purpose of raising funds for programs and projects to benefit elk. These license tags may be sold at auction or by other method and are not subject to the fee limitation prescribed in subdivision (c).

SEC. 3. Section 1050 of the Fish and Game Code is amended to read:

1050. (a) All licenses, certificates, permits, and license tags authorized by this code shall be prepared and issued by the department.

(b) The commission shall determine the form of all licenses, license tags, and certificates and the method of carrying and displaying all licenses, and may require and prescribe the form of applications therefor, and the form of any contrivance to be used in connection therewith.

(c) Whenever, under any of the provisions of this code, a permit, certificate, license, license tag, reservation, or application is provided for, the commission shall, in accordance with the provisions, prescribe the terms and conditions under which the permit, certificate, license, license tag, reservation, or application shall be issued and the department shall issue the permit, certificate, license,

license tag, reservation, or application in accordance therewith and with the applicable provisions of law.

(d) Whenever this code does not specify whether a fee is to be collected, or does not specify the amount of a fee to be collected for the issuance of any license, license tag, certificate, permit, application, reservation, or other entitlement, the commission may establish a fee or the amount thereof by regulation. The commission may also provide for the change in the amount of the fee in accordance with Section 713. However, no fee may exceed the reasonable costs incurred by the department in implementing and administering the program or activity to which the license, license tag, certificate, permit, application, reservation, or other entitlement is related.

(e) Whenever this code provides for a license, license tag, certificate, permit, reservation, or other entitlement, the commission may establish a nonrefundable application fee, not to exceed seven dollars and fifty cents ($7.50) sufficient to pay the department's costs for issuing the license, license tag, certificate, permit, reservation, or other entitlement and may adjust the application fee in accordance with Section 713.

SEC. 4. Section 4902 of the Fish and Game Code is amended to read:

4902. (a) The commission may adopt all regulations necessary to provide for biologically sound management of Nelson bighorn sheep (subspecies Ovis canadensis nelsoni) within each management unit in the area described in subdivision (b).

(b) After the plans developed by the department pursuant to Section 4901 for the management units specified in this subdivision have been submitted, the commission may authorize sport hunting of mature Nelson bighorn rams found in the Marble Mountains (townships T6NR13E, T6NR14E, T7NR13E, San Bernardino Base and Meridian) and the Kelso Peak and Old Dad Mountain area (townships T11NR11E, T11NR12E, T12NR10E, T12NR11E, T12NR12E, T13NR10E, San Bernardino Base and Meridian), San Bernardino County. Prior to authorizing the sport hunting, the commission shall take into account the Nelson bighorn sheep population statewide, including the areas specified in this subdivision.

Notwithstanding Section 219, the commission shall not, however, adopt regulations authorizing the sport hunting in a single year of more than 15 percent of the mature Nelson bighorn rams in the management units specified in this subdivision, as determined by the department by an annual count conducted in each management unit.

(c) The fee for a license tag to take a Nelson bighorn ram in the area described in subdivision (b) may be determined by the commission, but shall not exceed five hundred dollars ($500).

(d) The commission shall annually direct the department to authorize not more than one of the license tags available for issuance

that year to take one Nelson bighorn ram in the area described in subdivision (b) for the purpose of raising funds for programs and projects to benefit bighorn sheep. This one license tag may be sold at auction or by other method and shall not be subject to the fee limitation prescribed in subdivision (c).

(e) No license tag issued pursuant to this section shall be valid unless and until the licensee has successfully completed a prehunt hunter familiarization and orientation and has demonstrated to the department that he or she is familiar with the requisite equipment for participating in the hunting of bighorn rams, as determined by the commission. The orientation shall be conducted by the department at convenient locations and times preceding each season, as determined by the commission.

SEC. 5. Section 4904 of the Fish and Game Code is amended to read:

4904. (a) The department shall annually report the following to the Legislature:

(1) The management units for which plans have been developed pursuant to Section 4901.

(2) A summary of the data from the annual count conducted by the department for the purposes of subdivision (b) of Section 4902.

(3) The number of license tags issued in the preceding season, and the number of mature Nelson bighorn rams taken under valid license tags in the preceding season.

(4) Any instance known to the department of the unlawful or unlicensed taking of a bighorn sheep in this state and the disposition of any prosecution therefor.

(5) The number of bighorn sheep relocated during the previous year, the area where reintroduced, a statement on the success of the reintroduction, and a brief description of any reintroduction planned for the following year.

(b) The report which is due in 1991 shall be presented to the Legislature on or before July 1, 1991, and shall consist of a compilation of the results of the ongoing study conducted pursuant to this section each year since the enactment of this chapter and an assessment of the environmental impact of the hunting of Nelson bighorn sheep on the herds.

SEC. 6. Section 4905 of the Fish and Game Code is repealed.

SEC. 7. Section 6 of this act shall become operative on January 1, 1992.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.